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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

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PATRICK G. MARTONE,

Appellant,

versus

CECYL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER, and JOHN JULIEN McKEITHEN,

Appellees.

Appeal from the Supreme Court of the State of Louisiana.

STATEMENT AS TO JURISDICTION.

J. MINOS SIMON,
1408 Pinhook Road,
Post Office Box 52116, OCS,
Lafayette, Louisiana,
Attorney for Appellant.

Franklin Printing Company, Inc. • 209 Magazine St. • New Orleans • 522-9654

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No.

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Appellees.

Appeal from the Supreme Court of the State of Louisiana.

STATEMENT AS TO JURISDICTION.

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, files this statement of the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the Louisiana Supreme Court, in dismissing appellant's petition, and should exercise such jurisdiction in this case.

OPINION BELOW

The reasons and judgment of the Louisiana Supreme Court were finally entered on March 25, 1968. A copy of the opinion is attached hereto as Appendix A, *infra*, P. 1a. This decision has not been reported.

JURISDICTION

This appeal is from a final judgment entered by the Louisiana Supreme Court, dismissing appellant's lawsuit which prayed for a preliminary and permanent injunction against the enforcement of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967. Because this State Statute is lengthy its text is reproduced and attached hereto as Appendix B, *infra*, P. 1b. It is reported in West's Louisiana Revised Statutes Annotated, Volume 16, Page 9 of the 1967 Cumulative Annual Pocket Part, officially cited as R.S. 23:880.1-880.18. Appellant's petition alleges that the statute as a matter of law and as administered deny him privileges and immunities as a citizen of the United States, due process and equal protection of the laws, guaranteed by the Fourteenth Amendment to the United States Constitution.

The action was dismissed by final order dated March 25, 1968. Notice of appeal was filed June 10, 1968.

This court has jurisdiction on direct appeal to review said judgment below under 28 U.S.C. 1257(2) and 2101(c), and the following decisions sustain that jurisdiction: *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S. Ct. 624; *Greene v. McElroy* (1959), 360 U.S. 474, 79 S. Ct. 1400; *Morgan v. United States*, 304 U.S. 1, 58 S. Ct. 773; *Cooper, et al. v. Aaron, et al.*, 358 U.S. 1, 78 S. Ct. 1401; *State of Missouri, ex rel. Gaines v.*

Canada, et al., 305 U.S. 337, 59 S. Ct. 232; *Beauharnais v. People of the State of Illinois*, 343 U.S. 250, 72 S. Ct. 725; *N.A.A.C.P. v. Button, et al.*, 371 U.S. 415, 83 S. Ct. 328; *Saunders v. Shaw*, 244 U.S. 317, 37 S. Ct. 638; *United States v. Morton Salt*, 338 U.S. 632 (1950); *Elkins v. United States*, 364 U.S. 206 (1960); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966); *Mapp v. Ohio*, 378 U.S. 1 (1961); *Cf. Rogers v. United States*, 346 U.S. 367 (1951); *Malloy v. Hogan*, 378 U.S. 1 (1964); *O'Connell v. United States*, 140 F. 2d 201 (2d. Cir. 1930); *Shushan v. United States*, 117 F. 2d 110 (1941).

QUESTIONS PRESENTED

1. Is a state statute valid, which by its terms creates an executive trial agency, whose sole function is to conduct public hearings for the purpose of making "findings" (a) that state or federal crimes have been committed, and (b) that named individuals are guilty of the commission of such crimes; which "findings" must be "publicized", as part of a criminal process, where persons suspected or called as witnesses are denied (1) the right to examine or cross-examine any witness who may testify for or against him, (2) the right to the effective assistance of counsel, (3) the right of confrontation, (4) the right to compulsory process for the attendance of witnesses, (5) the right to effective and meaningful rules of evidence, (6) the right to meaningful and definable standards of guilt or innocence and (7) the right of appeal?

2. Do the acts and deeds of state officials in willfully applying the provisions of said state statute in a discriminatory manner against appellant and members of a labor union, for the sole purpose of destroying said labor union and discrediting its members, deprive appellant and

those similarly situated of constitutional due process and equal protection of laws guaranteed by the Fourteenth Amendment to the United States Constitution?

3. Is the dismissal of appellant's lawsuit by the Louisiana Supreme Court a denial of constitutional due process and equal protection of state laws, guaranteed by the Fourteenth Amendment, where appellant's lawsuit presented for that court's consideration only the validity of an interlocutory judgment?

STATEMENT OF THE CASE

The legal issues on this appeal are framed by the pleadings of appellant's lawsuit filed in the Nineteenth Judicial District Court at Baton Rouge, Louisiana. In his lawsuit appellant charges that the state statute in controversy, as a matter of law and as administered, deprives him of privileges and immunities as a citizen of the United States, of due process and equal protection of laws, guaranteed by the Fourteenth Amendment to the United States Constitution. The burden of his complaint is that the state statute creates an executive trial agency, known as the Labor-Management Commission of Inquiry. Its sole function is to conduct public hearings in the field of labor-management relations for the purpose of making "findings" concerning the existence of state or federal crimes and to identify the individuals who are guilty of the commission of such crimes. Under the terms of said statute these "findings" of guilt of law violations must be publicized. After this state agency has found named persons guilty of having committed crimes, and after such "findings" have been duly "publicized", it then becomes the mandatory duty of said state agency to "report its findings and recommendations to the proper federal and state authorities, or either of them, **charged with the responsibility**

for prosecution of criminal offenses." In addition, when directed to do so by the Commission, "the **Chairman** shall file appropriate charges with the state and federal authorities having jurisdiction." Section 880.7(b). Thus the public hearing, the findings of guilt, and the publicizing of these findings are part of the criminal process.

Appellant further charges in his petition that a person subpoenaed before this trial agency as a potential accused or as a witness is denied the right to the effective assistance of counsel, to examine and cross-examine the witnesses against him, to compulsory process for the attendance of witnesses in his behalf, to the benefit of effective and meaningful rules of evidence and to the benefit of meaningful and definable standards of guilt or innocence. Thus he is denied the rudiments of constitutional due process and equal protection of laws.

Appellant further charges in his lawsuit that the sole purpose for which the Labor-Management Commission of Inquiry was created was to be used as an instrument of the state "to scandalize and injure your petitioner, Edward Grady Partin and members of Teamsters Local Union No. 5 of East Baton Rouge Parish, Louisiana and persons, firms and organizations doing business with or otherwise associated with said persons or Union." He charges that the officers, agents, employees and representatives of said state agency by their acts and deeds have applied the provisions of said state statute discriminatorily and illegally against him and members of said labor union. As to him he specifically charges that by the process of duress, intimidation and corrupt practices, including promises of immunities and things of value, these state officials have extracted from third parties knowingly false incriminatory statements. Specifically he charges that these state officials fraudulently induced two named individuals to make and

subscribe to false statements involving him and other members of the labor union in criminal activities antedating the creation of the state agency by some three to four years and obtained such knowingly false statements by actually delivering to the parties subscribing to the false statement the sum of Two Hundred Fifty ($250.00) Dollars in cash plus a 1962 Ford automobile and a grant of immunity from criminal prosecution. He alleges that said state officials knowingly used said fraudulent statements as a basis to bring about his indictment for criminal law violation.

Based upon these substantial averments, as contained in his lawsuit, (reproduced in Appendix B at P. b-19) he prayed for a temporary restraining order, a preliminary injunction and a final injunction against the enforcement of the state statute because of its constitutional invalidity. His application for a temporary restraining order was denied. In due course a hearing as to his application for a preliminary injunction was conducted. This hearing, however, was limited only to the question of whether or not the state statute in question as a matter of law was unconstitutional. The questions of fact raised by his pleadings were not considered.

On January 5, 1968, Honorable Fred A. Blanche, Jr., State District Judge, to whom the question of the preliminary injunction was submitted, held that the state statute indeed was unconstitutional in that it violated appellant's rights as secured to him by the Fourteenth Amendment to the United States Constitution.

In analyzing the state statute in question in his reasons for judgment Judge Blanche observed that: (this opinion is reproduced in Appendix C at P. 1c)

> "* * * the statute is concerned with the taking of testimony and receiving evidence in a public

hearing by the Commission to determine if a crime has been committed and to determine the parties responsible for having committed said crime. In other words, there is conducted an open hearing where certain persons will be accused of a crime in public and such persons are without the constitutional safeguards to face their accusers. This is much different from Grand Jury investigations where the proceedings are conducted in secrecy and an accusation made. Thereafter the accused has his day in court with all 'due process' safeguards. Under this system one could only fairly exonerate himself from an accusation thus made by demanding and insisting that he be tried by the appropriate authorities on the charges made by such persons against him. Under the rules of the Commission, the accused has no real opportunity to explain away the charges made against him. In other words, by the safeguards the plaintiff seeks, he might well use the forum for subjecting the charges against him to a scrutiny that might disprove them or, at least, establish that they were incompatible with innocent conduct. Nor can there be any doubt but that the Commission will pass official judgment on individuals whom they have under scrutiny, particularly in view of the specific language in 880.7-a concerning the publicizing of findings and conclusions as to specific individuals.

"Stated differently, there is no doubt that, although denominated a fact-finding and investigatory agency, the Commission is charged with making **findings** with respect to actual or probable violations of criminal laws and in fact may either file appropriate charges with the authorities (880.7-b) or request the Governor to ask the Attorney General to cause criminal prosecutions to be initiated (880.7-d). It also appears that an accusatory function is involved, and on the basis of the hearings thus far held, that the Commission has become in fact a forum for the litigation of individual culpability

and that official incriminatory and defamatory judgments on individuals will be a necessary concommitant of the hearings. This is, of course, aggravated by the fact that the Commission's members and employees are immune from suit (880.16) and that the right of rebuttal testimony and subpoena power is largely discretionary with the Commission. (880.12)

* * * * *

"Certainly it is my personal feeling that the procedure here at issue can only lead to 'effective trial' by executive agencies and legislative committees to the prejudice of the ultimate trial itself and puts in the hands of the executive branch power historically vested in judges, grand juries, district attorneys and local police officials. Effective use of these historical agencies could go far in eliminating any adverse effect this decision might have.

* * * * *

"What we have here is more than an agency whose sole purpose of existence 'is to find facts which may subsequently be used as the basis for legislative or executive action' (Hannah), more than an inquiry 'to pursue a legislative policy of fire prevention through the discovery of the origins of fires [rather than adjudicate individual responsibility for the fire]' *(Re Gorban,* 352 U.S. 330, 1 L. Ed. 376, 77 S. Ct. 510), and more than a general inquiry into powers before it 'not as potential accused but solely as witnesses' *(Anonymous Nos. 6 & 7 v. Baker,* 360 U.S. 287, 3 L. Ed. 2d 1234, 79 S. Ct. 1157). Rather, we have here an agency which makes determinations in the nature of adjudications affecting legal rights *(Morgan v. U.S.,* 304 U.S. 1, 82 L. Ed. 1129, 58 S. Ct. 773; *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 95 L. Ed. 817, 71 S. Ct. 624; and, *Greene v. McElroy,* 360 U.S. 474, 3 L. Ed. 2d 1377, 79 S. Ct.

> 1400). Its duty in large part is to find that named individuals are responsible for criminal actions and to **advertise** (publicize) such findings and serve as part of the process of criminal prosecution. (See Justice Frankfurter's concurring opinion, *Hannah*, 4 L. Ed. 2d 1307, 1353)"

On January 9, 1968, a written judgment for a preliminary injunction was granted to appellant. On the same date defendants appealed that judgment to the Louisiana Supreme Court. The Louisiana Supreme Court granted defendants' request for special assignment and consequently the appeal was heard on January 18, 1968. On February 20, 1968 the judgment appealed from was reversed and appellant's lawsuit was dismissed. In reversing, the Louisiana Supreme Court held that the Louisiana Constitution guarantees the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses only in criminal proceedings. Said the court:

> "Furthermore, the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses are guaranteed only by Section 9 of Article 1 of our Constitution to an accused in a criminal prosecution. * * *"

Furthermore, the State Supreme Court held that as a matter of constitutional law the right to be free from a formal accusation of criminal law violation, the right to privacy, to personal dignity and good repute, where there is no right of redress, are not to be included in the catalog of personal rights falling under the protective aegis of the Fourteenth Amendment. On this score the Louisiana Supreme Court said:

> "Surely it cannot be said that persons investigated by the Commission, **who are found factually**

> **to have violated any criminal law,** are deprived of either life or liberty or property by such finding. * * *"

Despite the fact that the sole purpose for which public hearings are conducted by the state agency in controversy is to make "findings" as to both state and federal law violations, to find that named individuals are guilty of criminal law violations, thereafter to "publicize" such "findings" of guilt, and then to report such "findings" to "the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses," or to have its chairman file criminal charges against such individuals, the Louisiana Supreme Court held that the majority decision of this court in *Hannah v. Larch*, 363 U.S. 420, 4 L. Ed. 2d 1307, 80 S. Ct. 1502, was dispositive of the constitutional question raised by appellant.

Despite the fact that defendants' appeal presented to the Louisiana Supreme Court the determination of the validity of an interlocutory judgment, that state court dismissed appellant's lawsuit as though there had been a trial on the merits, contrary to the provisions of state law in such cases applicable.

In his application for rehearing (reproduced in Appendix D at P. 1d) appellant pointed out, among other things, that the State Supreme Court had overlooked the essential justiciable controversy presented by the appeal as to the operative effect of the state statute on appellant's constitutional liberty, that the court committed error in holding that the Commission of Inquiry did not have power to institute formal criminal accusation, that its decision was contrary to its previous decision in OPEN HEARING INVESTIGATION, 245 La. 1059, 162 So. 2d

565; that it committed error in holding that the purpose of the state statute was to enable the Legislature to enact new laws, especially where such a purpose is expressly proscribed by Section 880.6(d) of the statute, and that it was error for the court to dismiss appellant's lawsuit where the appeal presented only the validity of an interlocutory judgment. This application for rehearing was denied on March 25, 1968, without the assignment of any reason whatever and thus the opinion and decision of the Louisiana State Supreme Court became final.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The offensive nature and over-reaching quality of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967 (R. S. 23:880.1 - 880.18) can be accurately appraised only if the nature and function of the Commission of Inquiry which it creates are subjected to close scrutiny. The structure of its power is a good beginning point.

The Commission of Inquiry is an executive trial agency. Its powers of inquiry are to be exercised only on an ad hoc basis, Section 880.1, and then only when, in the opinion of the Governor alone, that power should be exercised. Section 880.5. Thus the reins of control are vested exclusively in the already powerful hands of the Governor of the State of Louisiana and the standards of judgment by which he is to be guided in unleashing the consummate power of depredation inherent in the Commission are so vague and indefinite as to offer no legally definable guidelines whatever, with the result that the Governor thereby is invested with arbitrary and capricious powers to injure and damage or praise and compliment accordingly as his whim may induce him to act.

The Commission of Inquiry consists of nine (9) members appointed by the Governor. Section 880.1. Moreover the Governor appoints the chairman and vice-chairman. Section 880.2. A majority of five (5) controls. Section 880.4.

All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the State and of the political subdivisions of the State are mobilized and impressed into cooperative service with the Commission to the end of effectuating its function and duties by the provisions of 880.6(d). Moreover, on the simple request of the Governor the entire investigatory forces of the Commission of Inquiry are assignable to the State Police and during that assignment the assignees "have all the power and authority of other members of the State Police". Section 880.6(c). Thus all the power and might of the State of Louisiana are harnessed to the executive juggernaut.

This great arsenal of power is concentrated in a narrow functional chamber aimed at conducting public trials concerning criminal law violations. Significantly the Commission of Inquiry does not conduct inquiry which is related to or in furtherance of a legitimate task of the Legislature. In fact it does not report to the Legislature. **It is not a fact-finding agency** of the Legislature or even of the Executive, such as permissibly may be created for the purpose of gathering facts to be used by the Legislature or the Executive in formulating **remedial legislation.** To the contrary it is **prohibited** from doing this forasmuch as it is powerless to "hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problems or disputes". Section

880.6(b)[1]. It is an executive trial agency which receives evidence to ascertain the existence of "facts surrounding or pertinent to * * * * any actual or probable violations of the criminal laws of this State or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relation". Section 880.6(a).

After conducting its investigations and hearings, it is the **mandatory duty** of this Commission to make findings of fact limited to two (2) objectives: (a) the violations of any criminal law or laws of the United States or of the State of Louisiana, and (b) the guilt or innocence of specific individuals as to such criminal law violations. Section 880.7(a). Not only is it the mandatory duty of the Com-

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[1]B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of any labor problem or dispute but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matter which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lock-out or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters or (4) any alleged acts of violence or threats of violence or so-called "mass picketing", or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute", as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

mission to make such "findings" but the Commission must "publicize" these "findings". Additionally no such "findings" can be made and "publicized" unless it is preceded by a "public hearing". Section 880.7(a). Thus the legislative intent to "publicly" condemn is unmistakably clear. After the Commission has made public "findings" that certain citizens are criminals it then becomes its mandatory duty to "report its findings and recommendations to the proper federal and state authorities, or either of them, **charged with the responsibility for prosecution of criminal offenses.**" In addition, when directed to do so by the Commission, "the **chairman** shall file appropriate charges with the state and federal authorities having jurisdiction. Section 880.7(b).

This Commission is empowered to adopt rules and regulations controlling its function, to employ necessary personnel, to administer oaths, to issue subpoenas for the personal appearance of witnesses and for the production of books and to take depositions anywhere in the United States. Section 880.8. Subpoenas may be served by anyone designated by the Commission and the Commission may apply to the courts to compel attendance of witnesses and it is empowered to compel obedience to its will by instituting contempt proceedings. Section 880.9.

Arrayed against such an ominous police structure is your appellant and persons similarly situated. One called as a witness may be a potential suspect. Nevertheless neither prosecuting witness nor victim has a right to examine or cross-examine any witness who may testify for or against him.[2] There is no right to the effective assistance of counsel,[3] no right of confrontation, no right to compul-

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[2]Section 880.10 (b) expressly provides that:
"*In no event* shall counsel for any witness have any right to examine or cross-examine any other witness * * *."

[3]While Section 880.10(b) grants to a witness the right to be ac-

sory process for the attendance of witnesses. There are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and no right of appeal.

The Commission may receive any type evidence, hearsay or otherwise. Furthermore no matter how willful, how malicious, how irresponsible the conduct of the employees, agents, representatives and officials of the Commission may be, and no matter how grave the resultant injury, by virtue of the provisions of Section 880.16 the doors of all the courts of Louisiana are shut against its victims for redress of grievances, including injury to person and reputation. Such is the nature and function of the Commission of Inquiry created by Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967.

ACT PATENTLY UNCONSTITUTIONAL

The validity of the provision of any statute must be tested not by its labels or title but on the basis of the terms employed. *Connerly v. General Construction Co.*, (1926) 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322. The terms employed by the Act under consideration unmistakably characterize and empower the Commission of Inquiry as an accusatory body charged with the exclusive responsibility of finding the existence of criminal law violations and of naming individuals who are guilty of these criminal violations. That is its raison d'etre. It can function only under the glare of public view. While it has power to hold execu-

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companied by counsel, who may advise him, such right to counsel is made wholly ineffective, because counsel's act of advising the witness of his rights is "subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing". In fact the insistence of counsel on his advocacy itself may be construed as disorderly behavior toward the commission and thus subject counsel to a contempt citation, pursuant to the provisions of 880.0(b) (2).

tive hearings, evidence adduced during such hearings cannot form the basis of its "findings". Such evidence must be heard anew in open hearings before it can be considered by the Commission in making its "findings". Section 880.12(a). In effect, therefore, the Commission's sole function is to conduct what is tantamount to a preliminary hearing as used in the federal criminal law system or a preliminary examination as used in the state criminal law system. Moreover while the incriminating and defamatory evidence is being heard, television cameras are grinding away and representatives of the news media are ever present collecting the evidence, sensationalizing it and subsequently disseminating it throughout the State and even to the far reaches of the nation with the result that the entire population of the State sits as a jury to determine the guilt or innocence of the accused. In such a context the guilty verdict of the Commission is almost anti-climactic. Nevertheless the accused stands formally adjudged a criminal. He is thereby forever stigmatized with all of the horrendous consequences of that stigma.

His prior good reputation in the community is reduced to rubbish. He is now a pariah, to be shunned. He is an object of derision. His wife, his children, his parents and his relatives must share his shame. A bearing of self-respect and personal dignity now is publicly judged as morbid arrogance or personal depravity. The stigma is like a communicable disease. Those who associate with him will contract the stigma. He is no longer a suitable candidate for employment. Prudent employers dare not risk contracting the disease which infects him. Thus he suffers a great impairment of employment opportunities.

He has arrived at this disasterous station in life not because he is guilty of any wrongdoing. His abysmally servile and scandalous status exists because the State of Loui-

siana has deprived him of the opportunity to defend himself, to show the falsity of the dastardly charges made against him. He stands thus injured because in the face of the calumny which engulfs him he was not granted the right to confront his accusers, to have the effective assistance of counsel, to examine and cross-examine the witnesses against him, to bring witnesses to testify on his behalf. He was assassinated by weapons rejected as rank contrabands by all civilized societies, namely, opinion evidence, innuendos, and hearsay testimony, because no effective and meaningful rules of evidence were applied to control the scope and nature of the evidence against him. His guilt was based on no meaningful and definable standards of guilt or innocence, and thus was the product of caprice and whim. In short he is the victim of a classic Inquisition, an ugly recrudescence of the infamous days of Salem.

Standing thus denuded of personal dignity, defamed in good repute and denied of inalienable rights, he is without meaningful recourse or effective redress. Those officials who have plundered him are immune from civil liability by the very statute which authorized the slaughter. Those whose damaging hearsay evidence scandalized him enjoy the protective shield of quasi-privilege, because they were compelled by the duress of contempt punishment to respond to questions which expressly elicited such hearsay evidence. There is only one possible way out. The gods that be may prevail upon the Chairman of the Commission of Inquiry to administer the coup de grace, i.e., to file criminal charges against him as he is authorized to do by Section 880.7 (b), so that finally the accused may have the opportunity to defend himself, to confront his accusers, to examine and cross-examine them, to bring witnesses to testify on his behalf, to cull the evidence against him by the employment of meaningful rules of evidence and to have his guilt or innocence determined by meaningful and

definable standards. In this manner he stands the chance of being vindicated, of being exonerated, if only he can find a judge or jury who can still impartially evaluate the evidence against him. Should the Chairman of the Commission not be possessed of the charity to administer the coup de grace, then he may still approach the state or federal district attorney on bended knees and beg to be criminally prosecuted so that thereby he may have the opportunity to be exonerated, to wash off the contamination of the stigma and erase his eroded image from the public mind, if that is still possible. In other words he must invite the ignominy of a public trial, the further scourge of criminality and the financial burden of a defense for the opportunity to prove his innocence, to unring the bell of degradation sounded against him, to attempt to right a wrong that is constitutionally impermissible.

Thus by the plain terms of this statute the Commission of Inquiry of Louisiana conducts public trials concerning the existence of crimes and the guilt or innocence of persons in relation to those crimes. Furthermore this public body determines the criminal liability of persons whom it may find are so involved. Moreover such a determination or "finding" of criminal liability must be made public. Additionally these findings of necessity contain a defamatory content. The only authority which this State agency lacks is the power to impose a fine or sentence the guilty person to a term of imprisonment. The lack of that power, however, does not make the adjudication or determination less binding. Nothing is more binding and everlastingly so nor more consummately injurious than a public condemnation formally pronounced after a public hearing by a State agency whose solo mission is to make such a determination.

The apocryphal claim that the state Commission is

nothing but an innocent fact-finding agency such as was involved in *Hannah v. Larche* (1960), 363 U.S. 420, 80 S. Ct. 1502, is supported neither by the terms of the state statute in controversy nor by the decision in HANNAH.

There is a marked difference between what is permitted in HANNAH and what is licensed in the instant case. For example, as the court observed in HANNAH, "potentially defamatory, degrading, or incriminating testimony shall be received in **executive session,** and that any person defamed, degraded, or incriminated by such testimony shall have an opportunity to appear voluntarily as a witness and to **request the commission to subpoena additional witnesses;** that testimony taken in executive session shall be released **only upon the consent of the commission".** (80 S. Ct. at P. 1509). The very contrary is true as to the function of the Commission of Inquiry. For example the Commission deals **only in incriminating testimony. Nothing** heard in executive session may be considered by it in making its findings. Its findings are based **entirely** on incriminating evidence and its findings can relate to **nothing but incriminating testimony.** Of necessity its findings embrace a defamatory content. Further its incriminatory and defamatory findings must be **publicized.** The ultimate objective of the Commission function is to deliver these incriminatory findings to a state or federal authority charged with the responsibility of pursuing criminal prosecutions or to permit and direct its Chairman to institute such criminal prosecution. This is a far cry from the Commission function in HANNAH. In fact in his concurring opinion Justice Frankfurter states that if the function of the Commission in HANNAH were equivalent to that of the Commission of Inquiry involved in the instant case, the decision would be the reverse of what it was. Said Justice Frankfurter (80 S. Ct. at P. 1543):

> "Were the Commission exercising an **accusatory function,** were its duty to find that **named individuals were responsible** for wrongful deprivation of voting rights and to **advertise** such finding or to serve as **part of the process of criminal prosecution,** the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides."

This is precisely what the State Commission of Inquiry is. It exercises (a) an accusatory function, (b) its duty is to find that named individuals are responsible for criminal violations, (c) it must advertise such finding, and (d) its finding serves as part of the process of criminal prosecution. Thus all four conditions which Justice Frankfurter stated would demand the rigorous protections relevant to criminal prosecutions exist and concur in connection with the function of the Commission of Inquiry. This simply means that under the HANNAH decision the state statute is unconstitutional. As Justice Frankfurter observed the objectives and the function of the Commission on Civil Rights involved in HANNAH were completely opposite these involved in the instant case. Following his comments as quoted above Justice Frankfurter continued: (80 S. Ct. at P. 1543)

> "The objectives of the Commission on Civil Rights, the purpose of its creation, and its true functioning are quite otherwise. It is not charged with official judgment on individuals nor are its inquiries so directed. The purpose of its investigations is to develop facts upon which legislation may be based. As such, its investigations are directed to those concerns that are the normal impulse to legislation and the basis for it. To impose upon the Commission's investigations the safeguards appropriate

> to inquiries into individual blame-worthiness would be to divert and frustrate its purpose * * *."

The sole purpose of the State Labor-Management Commission of Inquiry is to make a finding of criminal law violations and an official judgment on individuals guilty of them. These judgments have but one function and that is to condemn and stigmatize individuals. Furthermore these judgments are preliminaries to and a part of the process of criminal prosecution. In such a situation all of the constitutional safeguards appropriate to criminal prosecution must be accorded these individuals. Justice Frankfurter so stated in his concurring opinion in HANNAH:

> "In appraising the constitutionally permissive investigative procedures claimed to subject individuals to incrimination or defamation without adequate opportunity for defense, a relevant distinction exists between those proceedings which are preliminaries to official judgments on individuals and those, like the investigation of this Commission, charged with responsibility to gather information as a solid foundation for legislative action. Judgments by the Commission condemning or stigmatizing individuals are not called for. **When official pronouncements on individuals purport to rest on evidence and investigation, it is right to demand that those so accused be given a full opportunity for their defense in such investigation, excepting, of course, grand jury investigations."**

In its opinion the Louisiana Supreme Court pointed to the disclaimer in the state statute that the state agency had no authority to make binding adjudication and urged this as a magic formula of immunity against the practical effects of the incriminatory and defamatory judgments

against individuals, which the state agency is duty-bound to make.

It is immaterial for the purpose of the resultant irreparable injury to the individual, that the "findings" of the Commission do not rise to the dignity of legalistic or binding "adjudication". The fact of the "findings" is the same. These "findings" declare a status. They are official pronouncements on individuals. They condemn; they stigmatize; they maim; and they cripple. The resultant injury is real, immediate and incalculable. As Justice Frankfurter said in his concurring opinion in *Joint Anti-Fascist Refugee Committee v. McGrath*, (1951) 341 U.S. 123, 71 S. Ct. 624, in connection with an identical argument: (71 S. Ct. at P. 650)

> "Nor does he obtain immunity on the ground that designation is not an 'adjudication' or a 'regulation' in the conventional use of those terms. **Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural fairness.** Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined to past instances."

The rights of individuals appearing before the Commission have been curtailed for want of procedural fairness and whether the form of the juggernaut which tramples these rights is that of "adjudication", "regulation" or "findings" the proscription of due process applies. In such a context the State statute's repugnance to elementary constitutional strictures is transcendent. *Greene v. McElroy* (1959), 360 U.S. 474, 79 S. Ct. 1400; *Joint Anti-Fascist Refugee Committee v. McGrath, supra.*

In HANNAH the court expressly held that the com-

mission in question did "not hold trials or determine anyone's civil or criminal liability". The Commission under the State law however does in fact hold trials. Moreover it holds public trials. The Commission furthermore determines the criminal liability of persons appearing before it and otherwise. In HANNAH the Court held that the commission did not "indict". But the Commission under the State law has the authority to effect the equivalent of an indictment. It is expressly authorized, through its Chairman, to file criminal charges against individuals. Thus it accuses, which is what an indictment does. In HANNAH the Court held that the commission "does not make determinations depriving anyone of his life, liberty or property". The Louisiana Commission however does make such determinations. Its determination that an individual is guilty of crime denies one of his legal right to be free from defamation, a property right recognized by the Court in *Joint Anti-Fascist Refugee Committee v. McGrath, supra.* And as the court said in HANNAH,

> "Thus, when governmental agencies adjudicate **or** make binding determinations which directly affect legal rights of individuals, **it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."**

A contextual evaluation of the statute in question leaves no room for doubt that the consequence of being adjudged or found guilty of criminal law violations, of being deprived of the right to be free from defamation, is neither conjectural nor incidental to the hearings of the Commission. Such consequences are the **sole** objectives of the hearings. The public pronouncement of such adjudication or findings is the **sole** reason for which the Commission exists; it is the **sole** purpose for which it functions. The Commission of Inquiry of Louisiana has no other legiti-

mate purpose than to make such adjudications. And in the constitutional context of due process, such findings are just as binding and just as much an adjudication as was the Attorney General's "designation" of subversion, found by the Court to be constitutional adjudication in *Joint Anti-Fascist Refugee Committee v. McGrath, supra;* just as much an adjudication as was the fixing of minimum rates by the Secretary of Agriculture in *Morgan v. United States,* 304 U.S. 1, 58 S. Ct. 773; and just as much of an adjudication as was the Security Clearance findings in *Greene v. McElroy, supra.*

Thus the State statute in question, for the multiple reasons heretofore mentioned, obviously is constitutionally null and void.

THE ACTS AND DEEDS OF STATE OFFICIALS DEPRIVE APPELLANT OF HIS CONSTITUTIONAL LIBERTIES

Salient aspects of appellant's original and supplemental petitions establish that defendants, in their official capacities as state officials, conspired together and acted in concert with others willfully and purposefully to deny and have denied to and deprived appellant and those similarly situated of their rights, privileges and immunities secured to them by the United States Constitution, including by way of illustration the right to (a) the equal benefits and protections of state laws, (b) the privilege not to be falsely accused of crime, (c) impartial justice, (d) the right not to be wrongfully prosecuted on the basis of false charges of criminal law violations, (e) the right to privacy, (f) the right to live in peace and dignity, free of false and malicious accusations, (g) the right to a good reputation and not unjustly and wrongly to be defamed and degraded, (h) the right not to have a pall of shame and public oblo-

quy engulf him, his parents, his relatives and friends, and (i) the right to earn a living and belong to a labor union without impairment to job opportunities. Such state actions give rise to substantial federal questions. *Cooper, et al., v. Aaron, et al.*, (1958), 358 U.S. 1, 78 S. Ct. 1401; *State of Missouri, ex rel., Gaines v. Canada, et al.* (1938), 305 U.S. 337, 59 S. Ct. 232; *Monroe v. Pape*, 81 S. Ct. 473; *United States v. Classic*, 313 U.S. 299, 61 S. Ct. 1031; *Pyle v. Kansas*, 317 U.S. 213, 63 S. Ct. 177; *Hague v. CIO*, 307 U.S. 496, 59 S. Ct. 954; *Birnbaum v. Trussell*, 371 F. 2d 672; *Basista v. Weir*, 340 F. 2d 74; *Nesmith v. Alford*, 318 F. 2d 110; *Cohen v. Norris*, 300 F. 2d 24; *Hughes v. Noble*, 395 F. 2d 495; *Brazier v. Cherry*, 293 F. 2d 400; *Coleman v. Johnson*, 247 F. 2d 273; *United States, ex rel, Potts v. Rabb*, 141 F. 2d 45; *Valle v. Stingel*, 176 F. 2d 697; *Cancino v. Sanchez*, 379 F. 2d 808; *Jenks v. Henys*, 378 F. 2d 335; *Brown v. Brown*, 368 F. 2d 992; *Morgan v. Labiak*, 368 F. 2d 338; *DeWitt v. Pail*, 366 F. 2d 682; *Smith v. Hampton Training School for Nurses*, 360 F. 2d 577; *Rivers v. Royster*, 360 F. 2d 592.

Furthermore the right to belong to a labor union is one secured to appellant by the First and Fourteenth Amendments to the United States Constitution and thus cannot be taken without complying with the rigorous demands of the due process and equal protection clause of the Fourteenth Amendment. *Beauharnais v. People of the State of Illinois* (1952), 343 U.S. 250, 72 S. Ct. 725, rehearing denied 72 S. Ct. 1070, 343 U.S. 988; *N.A.A.C.P. v. Button, et al.* (1963) 371 U.S. 415, 83 S. Ct. 328.

DISMISSAL OF APPELLANT'S LAWSUIT DENIES CONSTITUTIONAL LIBERTY

Only the validity of an interlocutory judgment was presented by defendants' appeal to the Louisiana Supreme

Court from the granting of a preliminary injunction by the trial court. The hearing in the state district court did not involve a consideration of the merits of the case and particularly of the factual allegations as to the acts and deeds of state officials. Under the law and jurisprudence of the State of Louisiana appellant had a legal right to a trial on the merits of his claim. As early as 1881 in the case of *State of Louisiana, ex rel., Butchers' Union and Slaughter House and Livestock Landing Co. v. The Judge of the Civil District Court of New Orleans, Division E*, 33 La. Ann. 436, 437, the State Supreme Court said:

> "A judgment dissolving a preliminary injunction, on rule and on the face of the papers, is ordinarily a mere interlocutory judgment which does not prevent the cause from proceeding to determination on the merits. The case is not different even where the injunction is the sole relief sought.
>
> "The effect of such a judgment is simply to declare that, on the face of the papers, the plaintiff is not entitled to the injunction."

Again in 1946, in the case of *Ridge Park, Inc. v. Police Jury of Jefferson Parish*, 210 La. 351, 27 So. 2d 128, 129, the Louisiana Supreme Court affirmed this unarguable principle of law. In overturning a trial court judgment which did precisely what the Louisiana Supreme Court did to appellant's lawsuit, it held:

> "Obviously the court was unauthorized to dismiss the plaintiff's suit on the merits since the only matter tendered to the court and submitted to it for adjudication under the rule nisi was 'why a preliminary injunction should not issue in this cause as prayed for.'
>
> * * * * *
>
> "* * * 'It is the approved rule that the granting

or refusing of a preliminary injunction is merely an interlocutory judgment designed to preserve the existing status pending a trial of the issues on the merits of the case.' "

The Louisiana Supreme Court, by virtue of the laws of the State of Louisiana, was without authority to dismiss appellant's lawsuit on the merits as it did. In so doing it has denied appellant a fundamental right of due process and equal protection as guaranteed to him by the Fourteenth Amendment to the United States Constitution. As such its decision must be reversed.

Respectfully submitted,

J. MINOS SIMON,
1408 Pinhook Road,
Post Office Box 52116, OCS,
Lafayette, Louisiana,

Attorney for Appellant.

PROOF OF SERVICE

I, J. Minos Simon, attorney for appellant herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the.....day of June, 1968, I served a copy of the foregoing statement as to jurisdiction on the several parties hereto by mailing said copies in a duly addressed envelope with first class postage prepaid to their attorneys of record, Ashton L. Stewart, Esquire, Special Assistant Attorney General, State of Louisiana, 604 Union Federal Building, Baton Rouge, Louisiana, and Wesley Wirtz, Esquire, Assistant Attorney General, State of Louisiana, State Capitol, Baton Rouge, Louisiana.

Lafayette, Louisiana, this.....day of June, 1968.

J. MINOS SIMON
Attorney for Appellant,
1408 Pinhook Road,
Post Office Box 52116, OCS,
Lafayette, Louisiana 70501.

APPENDIX A

SUPREME COURT OF LOUISIANA

PATRICK G. MARTONE

V.

No. 49,042

CECIL MORGAN, ET AL.

Appeal from the Nineteenth Judicial District Court
Parish of East Baton Rouge
Hon. Fred A. Blanche, Jr., Judge

McCALEB, Justice.

The Legislature of 1967, by Act 2 of the Extraordinary Session thereof (R.S. 23:880.1-880.18), created a commission denominated as the "Labor-Management Commission of Inquiry" to investigate and find facts relating to violations or possible violations of the criminal laws of this State or of the United States arising out of or in connection with matters in the field of Labor-management relations. According to the preamble to the act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State in the field of labor-management relations under which, by reason of suspected violations of the State and Federal criminal laws, there has been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons; that the present conditions vitally affect the public interest and threaten to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the presently existing conditions, the public interest requires that the causes therof be investigated on a statewide basis

as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of this State and of the United States.

In the body of the act, the Commission is created and invested with power to ascertain the facts surrounding and pertaining to any actual or possible violations of the criminal laws relating to, arising out of or connected with problems or disputes in the field of labor-management relations. This power was limited however, the act declaring, "* * * it shall be investigatory and fact finding only * * *", and it was further provided that "The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; * * *" and "No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law." Additionally, the act provides that the Commission "* * * shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law * * *. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature."

After the membership on the Commission had been duly appointed and the body began to function comformably with the authority vested in it, plaintiff instituted the present suit for an injunction as a taxpayer to have the statute declared unconstitutional on various grounds which will hereinafter be set forth and discussed. The principal attack levelled by the plaintiff is that the act denies him due process as guaranteed by Section 2 of Article I of the Louisiana Constitution and the Fourteenth Amendment to the Constitution of the United States, because the powers vested in the Commission are such that, in their investigations and hearings authorized under the act, plaintiff and/

or persons similarly situated are denied assistance of counsel, the right of confrontation, the right of cross-examination of witnesses and the right to compulsory process for their witnesses. The provisions of the act thus assailed have to do with the procedure rules set forth in the act for hearings by the Commission.

This attack was sustained by the district judge and the act declared unconstitutional in its entirety, despite the fact that it contains a severability clause. In accordance with his decision, the judge issued a preliminary injunction enjoining all action by the Commission and also enjoining the expenditure of funds appropriated in the statute. The defendants,[1] however, secured under R.S. 13:4061 and 13:4431 a suspensive appeal to this Court and the matter has been argued and submitted for our decision.

Imprimis, we notice that, although the defendants filed no written pleadings at the hearing on the rule nisi for a preliminary injunction, they have in this Court interposed exceptions of no right of action and no cause of action. We nevertheless pretermit discussion of these exceptions, in view of the conclusion we reach on the merits anent plaintiff's claims that the statute is unconstitutional. Accordingly, we direct our immediate attention to plaintiff's principal attack, and the holding of the trial judge, that R.S. 23:880.1-880.18 denies plaintiff and those similarly situated due process under the State and Federal Constitutions in that it is an agency "* * * which makes determinations in the nature of adjudications affecting legal rights. * * * * Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution."

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[1]They are: Cecil Morgan, Chairman of the Commission, William Redmann, Secretary of the Commission, Andrew P. Tugwell, State Treasurer, J. B. Lancaster, State Auditor, and John J. McKeithen, Governor of Louisiana.

This ruling, in our opinion, does not conform with the nature of the statute and the purpose for its enactment, for the Labor-Management Commission of Inquiry is not invested with any power to make adjudications affecting legal rights. On the contrary it is, as its provisions expressly set forth, an administrative commission (R.S. 23:880.1) created for the special purpose of investigating and finding facts in relation to violation of existing criminal laws "* * * affecting in a significant manner labor-management relations in one or more areas of the state * * *" in various construction projects which may, in the opinion of the Governor, operate as a serious threat to the economic well-being of the affected area or the State as a whole (R.S. 23:880.5) By Section 880.6(A) it becomes the duty of the Commission, when called on by the Governor to investigate and hold hearings, to receive testimony and documentary evidence and make findings with respect to any actual or probable violations of criminal laws which relate to the problems or disputes in the field of labor management relations.

Under the provisions of Section 880.7(A), the Commission is required to publicize its findings with respect to the question whether or not there is probable cause to believe that there have been violations of any criminal law arising out of the subject matter of its investigation. But it "* * * shall have no authority to and it shall make no binding adjudication with respect to such violation * * *", however it may make such recommendations to the Governor for action as it deems appropriate, and copies of its report are to be furnished to the Governor, Lieutenant Governor, the Attorney General and the Legislature. Nevertheless its findings, recommendations and conclusions may not be used as prima facie or presumptive evidence of guilt or innocence of any person in any court of law.

It is seen from the foregoing that this administrative

body has no right to adjudicate; it merely finds facts and recommends. Hence, it is difficult to perceive that these limited powers impinge upon any constitutional guarantee to which those being investigated are entitled under the Bill of Rights.

Section 2 of Article I of our Constitution provides in part: "No person shall be deprived of life, liberty or property, except by due process of law." Surely it cannot be said that persons investigated by the Commission, who are found factually to have violated any criminal law, are deprived of either life or liberty or property by such finding. Indeed, the administrative agency is merely an adjunct of the executive and legislative departments reporting, as it does, its findings of facts which may serve these departments with data from which new laws may be enacted, and also assist in the speedier and more effective enforcement of criminal laws in the highly sensitive and specialized field of labor-management relations. In truth, the findings of the Commission simply focus the attention of the prosecuting and executive officers to probable violations which may or may not provide a basis for criminal proceedings. No life, liberty or property are taken and can ever be taken by the investigation and finding, but only after institution of a formal charge and subsequent criminal proceedings clothed with all the safeguards of due process.

Furthermore, the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses are guaranteed only by Section 9 of Article I of our Constitution to an accused in a criminal prosecution. The investigatory and fact-finding functions of the Labor-Management Commission of Inquiry are clearly not a criminal prosecution (see Article 381, Louisiana Code of Criminal Procedure; State v. Williams, 192 La. 718, 189 So. 112, 122 A.L.R. 665; State v. Shushan, 206 La. 415,

19 So. 2d 185) and, hence, plaintiff's claim of denial of due process cannot in anywise be supported by Section 9 of Article I of the Louisiana Constitution.

Reverting again to the claim that the powers vested in the Commission violate the due process provision of Section 2 of Article I of our Constitution, we believe that the functions of the Commission, i.e., investigatory and fact finding, are somewhat akin to that of the grand jury lacking, however, the effectiveness of formal accusation, for the Commission reports merely inform the Legislature, the Governor and other executive officers that a crime has probably been committed. Without action on the part of those officers charged with the duty of prosecuting crime, the Commission's findings amount to nought. It is merely advisory and does not affect constitutional rights.

On the other hand, unlike grand jury proceedings, the Commission's hearings and findings may be public, and this is the underlying basis of plaintiff's complaint, for he says that this Commission is permitted to slander and otherwise castigate him, and that the only way he can exculpate himself from scandalous charges is to be indicted or informed against in a criminal prosecution. The thrust of the argument is that, absent the right of confrontation by his accusers, cross-examination and the summoning of his own witnesses, he may be subjected to slander, villification and disapprobation for which he is without redress, as the statute grants the members of the Commission and its employees immunity in any suit from any liability for damages in connection with its findings or proceedings had in the exercise of their duties.

We find no merit in this complaint. For it would overlook, we think, the fundamental concept that a mere accusation by those vested with governmental powers, act-

ing in the course and scope of their duties, does not in anywise deny due process to the accused. Indeed, the argument seems to be based on the premise that there is some sort of constitutional distinction between the public hearings of an administrative body and the secret proceedings of a grand jury. However, we know of no basic objection from a constitutional standpoint to an open investigation by an administrative body, from whose factual findings accusations of commission of crime may subsequently be charged by the properly constituted authorities. When the grand jury indicts and when a prosecutor charges by information, the accused is assuredly just as scandalized, actually more so, as the person found to have violated a criminal law by the Commission. Yet, no one could logically contend that the accused can claim violation of due process because he did not have a pretrial investigation with confrontation and cross-examination before the filing of the criminal charge.

In this connection we note that plaintiff's counsel, both in the district court and here, has contended that our per curiam opinion in State v. Open Hearing Investigation, 245 La. 1059, 162 So. 2d 565, controls the result that should be reached in the matter at hand.

The district judge was of the opinion that the cited case was not applicable because the Open Hearing Investigation involved a hearing instituted under R.S. 15:17.1 and 15:156 (which have since been repealed) in the nature of a judicial proceeding brought by the Attorney General or district attorney before a judge.

We agree with the conclusions of the district judge on this phase of the case. Since the statutes under which the open hearing was instituted did not prescribe procedural rules for the holding of such a hearing, a majority of this

Court felt that certain guidelines should be laid down for conducting the investigation and, since it was a judicial proceeding, we found that all formalities respecting the constitutional and legal rights of an accused in a criminal prosecution were to be observed. The case at bar is different for two cogent reasons.

First, the hearings provided for are before an administrative commission created by the Legislature, and the Commission's function to investigate and report to various executive and prosecuting officers, and also the Legislature, is purely administrative in nature. Secondly, since the act itself provides the procedural rules to be followed, this Court is without authority to strike down those procedures in the absence of a finding that they are unconstitutional. Besides, the establishment of guidelines for the procedure in the Open Hearing Investigation was in essence an advisory view given under our supervisory powers to control proceedings before inferior courts when, from the nature of the case, it is apparent that the legal and constitutional rights of all parties involved require protection.

We also are of the opinion that plaintiff's claim that the legislation violates the Fourteenth Amendment to the Constitution of the United States providing "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *" is equally without merit. In fact, it is our view that the Legislature in its effort to comply with the due process clause of the Fourteenth Amendment drafted the rules of procedure for the Commission in strict accordance with the views expressed by the majority opinion of the Supreme Court of the United States in the recent case (1960) of Hannah v. Larche, 363 U.S. 420, 4 L. ed. 2d 1307, 70 S. Ct. 1502.

In that matter, the Court was confronted with the

charge that the rules of procedure' adopted by the Civil Rights Commission (authorized by Congress in the Civil Rights Act of 1957, 71 Stat. 634, 42 U.S.C. §§ 1975-1975e) were violative of due process on the grounds that the Commission had been invested with power to adjudicate on matters affecting the life, liberty or property of the person under investigation. In determining that the contention was not well founded, the Court held that the Civil Rights Commission was empowered only to investigate allegations that persons had been discriminatorily deprived of their right to vote, and to report its findings to the President and the Congress.

The powers vested in the Commission in the case at bar are comparable and identical in scope with those reposed in the Civil Rights Commission, i.e., the authority to investigate and report. The Supreme Court in the cited case stated:

> "As is apparent from this brief sketch of the statutory duties imposed upon the Commission, its function is purely investigative and fact-finding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action." (See pp. 1320-21, 4 L. ed. 2d)

Moreover, in answer to plaintiffs' claim that confrontation, cross-examination, et cetera, were required in order to provide due process since the Commission's proceedings might irreparably harm "* * * those being in-

vestigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions * * *" (just as plaintiff is claiming in this case) the majority opinion in the Hannah case reasoned that, even if such collateral consequences were to occur (a purely conjectural result) from the Commission's investigations, "* * * they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative function." (See p. 1322, 4 L. ed. 2d)

Counsel for plaintiff and the trial judge impliedly recognize, as they must, the force of the majority opinion[2] in Hannah v. Larche, in which all of the cases relied on by the trial judge for his opposite view in this case were considered and distinguished.[3] This is made evident from a consideration of the judge's opinion herein, as well as the argument of counsel for plaintiff, which are based on the concurring opinion of Mr. Justice Frankfurter. In concurring in the result in the Hannah case, Mr. Justice Frankfurter assigned reasons plainly in discord with the view of the majority. This Court not only shares the majority view but, were it otherwise, we would perforce be bound to follow it.

Being of the opinion that the statute does not violate due process, we pass on to a consideration of plaintiff's other attacks on its constitutionality.

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[2]The opinion was subscribed to by six justices. Mr. Justice Frankfurter concurred in the result and Mr. Justice Douglas, with whom Mr. Justice Black concurred, dissented.

[3]The cases cited by the judge are Morgan v. United States, 304 U.S. 1, 82 L. ed. 1129, 58 S. Ct. 773; Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 95 L. ed. 817, 71 S. Ct. 524; and Greene v. McElroy, 360 U.S. 474, 3 L. ed. 2d 1377, 79 S. Ct. 1400. The prevailing opinion in the Hannah case declares: "Those cases are all distinguishable in that the government agency in each was found by the Court to have made determinations in the nature of adjudications affecting legal rights."

Counsel contends that Section 880.6(C) of the statute is unconstitutional in that it authorizes the Commission to assign all or part of its forces to the State Police to assist the latter in investigating any violations or probable violations of law, and that when so assigned these investigators have all the power and authority of other members of the State Police. It is said that this provision offends Section 15 of Article XIV of the Louisiana Constitution (the Civil Service Law) forasmuch as it is provided therein that the State Police shall function under the merit system and no one shall become a member of the State Police without first being examined as to his qualifications and being certified as eligible to become such a member.

We find no substance in the complaint. The investigators of the Commission do not become members of the State Police when temporarily assigned upon the request of the Governor, but are only given the power and authority of members of the State Police while acting under the assignment.

The next contention is that the statute violates Section 16 of Article III of the Constitution, it being asserted that it embraces more than one object and its title is not indicative of its objects.

We think the argument specious. The act has but one object—the creation of a Commission to investigate and find facts relative to the existence and violation of criminal laws in the field of labor-management relations in this State as a result of widespread shutdowns in the construction industry. Every provision of the law is germane to this single aim and purpose.

Counsel states that there are multiple objects, i.e., cre-

ation of new State Police Officers, Section 880.6(C); it defines new crimes and misdemeanors, Section 880.14; it grants power to officials of the Commission to give immunity to witnesses as to both State and Federal criminal prosecutions, Section 880.13; and confers immunity from civil suits for damages in favor of the Commission's members and employees, Section 880.16.

We find that all of these provisions are concomitant to the one aim and single purpose for which the legislation was enacted. Compare Stewart v. Stanley, 199 La. 146, 5 So. 2d 531.

Counsel proclaims that Sub-Section 2 of Section 880.18, which provides for an appropriation out of the General Fund of $250,000 for the use of the Commission for its operations is violative of Section 9 of Article IV of the Constitution, which specifies in substance that all appropriations other than these embraced in the General Appropriation Bill shall be made by separate bills "* * * each embracing but one object."

This contention hinges on a finding that the act in question contains more than one object and, since we hold that it does not, the appropriation is not violative of the constitutional provision. Compare Stewart v. Stanley, supra.

Plaintiff's petition alleges, inter alia, that Section 880.16 of the act denies him due process because it grants immunity to members and employees of the Commission from any suit or liability for damages sustained by a party as a result of the exercise of its functions and obligations in conformity with the provisions of the law. It is declared that this violates Section 6 of Article I of the Louisiana Constitution prescribing that all courts shall be

open, and every person for injury done him in his rights, lands, goods, person or reputation shall have adequate remedy by due process of law and justice administered without denial, partiality or unreasonable delay.

The point is insubstantial. The granting of immunity to the members and employees of the Commission does not deny to the courts jurisdiction to provide redress by due process in any suit instituted against these parties and, thus, cannot be regarded as violative of the constitutional provision. Indeed, the question raised pertains only to the validity of the immunity granted and is not in reality an issue in this case.

Finally, counsel declares that the act is unconstitutional as it constitutes an effort to invest the executive branch of the government with powers properly belonging to the judicial branch, violative of Sections 1 and 2 of Article I of our Constitution. Section 1 of Article I is totally without pertinence, and Section 2 of Article I deals with due process. Actually, counsel is really contending that the act is violative of Section 2 of Article II of the Constitution, which deals with the separation of powers of government, and declares that no one of them shall exercise power properly belonging to either of the others.

The short answer to counsel's proposition is that, contrary to his contention, the act does not confer on the executive branch of the government any powers properly belonging to the judicial branch.

For the reasons assigned the judgment appealed from is reversed and annulled and plaintiff's suit is dismissed at his costs.

APPENDIX B

ACT NO. 2
HOUSE BILL NO. 2

BY: MESSRS. MUNSON, LeBRETON, ORDONEAUX, GREMILLION AND MRS. WALKER AND MESSRS. DAWSON, McGEHEE, KEOGH, BERNHARD, HIMEL, TRICHE, GUIDRY, DWYER, BEESON, McMILLAN,* S. M. MORGAN, CASEY, TARVER, ANGELLE, SINGLETON, DeWITT, GREGSON, BOESCH, HILLENSBECK, CULPEPPER, COOPER, WILLIAMS, SULLIVAN, FORTIER, BORDES, CEFALU, FULCO, A. D. BROWN, JOHNSTON, DELONY, ANZELMO, BLUE, CHAISSON, CHRISTIAN, CRAIS, DALEY, LeBLANC, EARLY, GIBBS, GILL, HESSLER, KELLER, LANCASTER, LANDRENEAU, LAURICELLA, LYONS, MARCEL, McLAIN, O'BRIEN, PATTEN, POLK, RICHARDSON, SCHIELE, SIMON, STROTHER, SYLVESTER, TALBOT, VESICH, WILBANKS, WOMACK, WOOD, BARRANGER, BAUER, BEL, COLLIER AND SENATORS BLAIR AND O'KEEFE

AN ACT

To amend Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, to add thereto a new Part, to be designated as Part III-A thereof and containing R.S. 23:880.1 through R.S. 23:880.18, both inclusive, to create the Labor-Management Commission of Inquiry; to provide with respect to its composition, selection and other matters relating to the organization and functioning thereof; to fix the powers, duties and functions of said commission

*As it appears in the enrolled bill.

in connection with the investigation and findings of facts relating to violations or possible violations of criminal laws of the state of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations, including the exercise of the subpoena power; the authority to take depositions; to authorize the commission to hold executive and public hearings; to provide with respect to the rights, privileges, duties and immunities of witnesses; to define certain misdemeanors and fix penalties therefor; to provide with respect to contempt committed before the commission or in connection with its process; to require cooperation with the commission by all public officials, boards, commissions, departments and agencies of the state and all political subdivisions thereof; to otherwise provide with respect to matters pertaining to the purposes for which said commission is created, and to appropriate the sum of Two Hundred and Fifty Thousand ($250,000.00) Dollars, or so much thereof as may be necessary, out of the General Fund of the state of Louisiana for the fiscal year 1967-68 to the Labor-Management Commission of Inquiry, to be used by it for operations in connection with the purposes for which it is created.

WHEREAS, unprecedented conditions presently exist in the state under which there has been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations; and

WHEREAS, in connection with the conditions above referred to there have been allegations and accusations of violations of the state and federal criminal laws which should be thoroughly investigated in the public interest; and

WHEREAS, in order to supplement and assist the efforts and activities of the several district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States, it is imperative that additional investigative facilities on a state-wide basis be made available; and

WHEREAS, it is essential that immediate action be taken to empower the Governor in this existing situation and in any similar emergencies that may arise in the future promptly to initiate action by which the facts causing or contributing to such conditions may be investigated and other appropriate action taken when such investigation indicates probable violations of state or federal criminal laws. Now, therefore

Be it enacted by the Legislature of Louisiana:

Section 1. Part III-A of Chapter 8 of Title 23 of the Louisiana Revised Statutes of 1950, comprising R.S. 23:880.1 through R.S. 23:880.18, both inclusive, is hereby enacted to read as follows:

PART III-A. LABOR-MANAGEMENT COMMISSION OF INQUIRY

§ 880.1. Labor-Management Commission of Inquiry; creation, vacancies, domicile

The Labor-Management Commission of Inquiry is created as a permanent commission administratively, with the powers of inquiry hereinafter set forth only to be exercised on an ad hoc basis as hereinafter provided. The commission shall be composed of nine members who shall be appointed by the governor and who shall serve at the pleasure of the governor. Three of the members shall be appointed from among the representatives of organized labor in Louisiana, three from industry located within

Louisiana and three shall be Louisiana residents and representatives of the public generally. Any vacancy for any cause shall be filled by appointment by the governor in the same manner as above stated. Any temporary vacancy, including recusation of any member in any investigation, may be filled by the governor on an ad hoc basis.

The domicile of the commission shall be in the city of Baton Rouge, but meetings may be held at any place within the state.

§ 880.2. Officers of commission; secretary

The governor shall designate the chairman and vice-chairman, who shall be members of the commission. The governor's executive counsel shall serve as secretary to the commission and shall be the official custodian of all records of the commission, and in proper cases shall authenticate and certify to the accuracy thereof. He shall perform such other functions as are assigned by the commission.

§ 880.3. Compensation of members

The members of the commission shall receive no salary but each shall be paid a per diem of fifty dollars for each day of actual attendance at meetings of the commission and shall be paid at the rate of ten cents per mile for travel expenses incurred while on business for the commission.

§ 880.4. Quorum; vote necessary for actions

A majority of the members of the commission shall constitute a quorum. The affirmative vote of five members of the commission shall be necessary for the commission to take any action.

§ 880.5. Referral of matters to commission by governor

Whenever, in the opinion of the governor, there is serious and substantial indication or there are widespread allegations that there is or may be widespread or continuing violations of existing criminal laws of the United States or of the state of Louisiana affecting in a significant manner labor-management relations in one or more areas of the state and that, as a result thereof, there exists a serious threat to the economic well-being of the affected area or the state as a whole, he may refer the matter to the commission in writing for such action as it is hereinafter authorized to take.

§ 880.6. Public hearings, jurisdiction of commission

A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations. The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.

B. The commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations

on any of the strictly civil aspects of any labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matters which is solely an "unfair labor practice" or an "unfair employment practice" or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lockout or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not necessarily restricted to membership policies, election procedures, membership rights and like matters; or (4) any alleged acts of violence or threats of violence or so-called "mass picketing," or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a "labor dispute," as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised through such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this Part, or except for the institution of

contempt proceedings as provided in this Part or except when the commission has been made a defendant in any civil suit.

C. Upon the request of the governor, the commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During such assignment such investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police.

D. All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the state and of the political subdivisions of the state shall cooperate fully with the commission, to the end that it may effectively and comprehensively carry out its functions and duties.

§ 880.7. Findings; recommendations to governor; criminal charges; interim reports

A. Upon the completion of its investigations and after public hearing the commission shall make and publicize its findings with respect to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the state of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation. The commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations; however, it may, in its discretion, include in its findings the conclusions of the commission as to specific individuals or as to the general situation, or as to both, and it may make such recommen-

dations for action to the governor as it deems appropriate. Copies of its report shall be immediately furnished to the governor, the lieutenant governor, the attorney-general and the legislature. No findings, conclusions, recommendations or reports of the commission may be used as prima facie or presumptive evidence of the guilt or innocence of any person in any court of law.

B. If the commission finds that there is probable cause to believe that there has been a violation of any criminal law of the United States or of this state and that such violation arises out of or in connection with or as a result of a problem or dispute in the field of labor-management relations, it shall report its findings and recommendations to the proper federal and state authorities, or either of them, charged with the responsibility for prosecution of criminal offenses. In addition, when directed to do so by the commission, the chairman shall file appropriate charges with the state and federal authorities having jurisdiction.

C. The commission shall make interim reports of its findings to the governor at such times as the commission or the governor may deem desirable.

D. With respect to any of its findings, the commission may request the governor to refer the matter to the attorney general asking that he exercise the full authority conferred by Article VII, Section 56 of the Constitution in causing criminal prosecutions to be initiated in accordance with law.

§ 880.8. Powers of commission

In order to carry out the functions vested in it the commission may:

(1) Adopt, amend, publish and enforce such rules

and regulations, not inconsistent with the provisions of this Part, as it deems necessary to fully effectuate the purposes for which it is created.

(2) Employ and fix the duties and compensation of such attorneys, investigators, staff personnel and other persons and make such other expenditures as it finds necessary to accomplish the purposes of this Part; provided that all salaries and compensation fixed by the commission shall be approved by the governor.

(3) Administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of books, records, documents or other evidence deemed relevant or material to any executive session or public hearing held or deposition taken by the commission, but only at such executive session, public hearing or at the time of taking the deposition. The power herein granted to issue subpoenas and compel attendance of witnesses and the production of books, records, documents or other evidence shall be exercised in accordance with the provisions of Section 880.9 of this Part.

(4) Order testimony to be taken by deposition in cases where the commission determines that a witness is incapacitated, and by vitrue thereof, unable to attend the hearing or to appear in person before the commission during the course of an executive session or a public hearing, or is outside the boundaries of the state of Louisiana. Such depositions may be taken before any person designated by the commission who is authorized to administer oaths. Unless otherwise ordered by the commission, such depositions shall be filed at the public hearing and be made part of the record. Testimony by deposition may be taken within or without the state. If taken within the state subpoena

may issue from the commission compelling attendance and production of records. If taken without the state, the commission may apply to the district court having jurisdiction over the area where the commission is holding an executive session or public hearing, or to the district court in and for the parish of East Baton Rouge, for an order directing the taking of the deposition, in the manner provided by law for the taking of foreign depositions in judicial proceedings.

Testimony taken by deposition shall be reduced to writing by the person taking the deposition, or under his direction, and shall be subscribed by the deponent.

(5) Do and perform any other things necessary to accomplish the purposes for which it is created.

§ 880.9. Service of subpoenas; returns; failure to comply; contempt of commission

A. Subpoenas issued under authority of Paragraph (3) of Section 880.8 of this Part shall be served by domiciliary or personal service and may be served by any sheriff, deputy sheriff or employee designated by the commission. Domiciliary service shall be made by leaving the subpoena at the dwelling house or usual abode of the witness, with a person of suitable age and discretion residing therein as a member of the domiciliary establishment of the witness, or at any place where the business of the witness is regularly conducted, with a person of suitable age and discretion there employed. Subpoenas for the production of documents shall be served in a similar manner. The person making the service of any subpoena shall make a return thereon, setting forth the date, place, type of service and sufficient other data to show service in compliance with this Section. The return shall be signed and promptly returned to the commission.

B. (1) In the event any person fails or refuses to

obey a subpoena issued in accordance with the provisions of this Part, the commission may present its petition to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business, setting forth the facts. The court then shall have the power to compel such person to appear before the commission and give testimony or produce evidence as ordered. Any failure to obey such an order of the court may be punished by the court issuing the same as a contempt thereof. In addition, if any person commits any act which is contemptuous of any authority vested in the commission or of any procedure taken by the commission in conformity with the powers vested in it by the provisions of this Part, the commission may present its petition, setting forth the facts, to any state district court within the jurisdiction of which the hearing is held or within the jurisdiction of which the person is found or resides or has his principal place of business. Upon a finding of guilt, such person shall be adjudged in contempt of the commission and shall be punished by the court as a contempt of court.

(2) Contempt of the commission shall include but shall not be limited to any of the following acts:

(a) Contumacious failure to comply with a subpoena to appear before the commission, proof of service of which appears of record;

(b) Contumacious violation of an order excluding or separating a witness;

(c) Refusal to take the oath or affirmation as a witness, or refusal of a witness to answer a relevant question when ordered to do so by the commission, or refusal to answer any other question when granted the immunity conferred by Section 880.13 of this Part.

(d) Contumacious, insolvent or disorderly behavior toward the commission, any member thereof or its attorney during the course of any executive session or public hearing, which tends to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(e) Breach of the peace, boisterous conduct or violent disturbance tending to interrupt or interfere with the business of the commission or to impair its dignity or respect for its authority;

(f) Use of insulting, abusive or discourteous language by an attorney or other person at any hearing or in a document filed with the commission.

C. The chairman or other presiding officer may punish breaches of order or of decorum by censure or by exclusion from the hearing, or by both.

§ 880.10. Rights of witnesses; right to counsel

A. No person may be required to appear or to testify at any executive session or public hearing held by the commission or give a deposition unless a copy of this Part and a general statement of the subject of the investigation has been served upon him prior to the time when he is required to appear or to give a deposition.

Provided, however, that in the event a witness objects to a question or a series thereof or to the subpoena on the ground that he has not been given sufficient information as to the subject of the investigation, such objection shall be submitted to the commission, and in the event that the commission determines that the objection has merit, the commission shall inform the witness adequately as to the purpose of the investigation and shall afford the witness reasonable additional time within which to prepare for the hearing. If the commission determines by majority vote

that the objection is without merit, such ruling shall be final, and the witness shall be ordered to answer the questions of the commission or to comply with the subpoena. If the witness fails or refuses to comply with the order of the commission or fails or refuses to comply with the order of the commission after the lapse of such additional time as the commission may have granted him within which to comply after further advising him of the nature of the inquiry, the commission shall exercise its powers set forth in Section 880.9 of this Part.

B. A witness summoned to appear before the commission shall have the right to be accompanied by counsel, who may advise him of his rights, subject to such reasonable limitations as the commission may impose in order to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at an executive session or at a public hearing may question the witness he accompanies concerning relevant matters. In no event shall counsel for any witness have any right to examine or cross-examine any other witness but he may submit to the commission proposed questions to be asked of any other witness appearing before the commission, and the commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry.

§ 880.11. Witness fees

Witnesses summoned to appear before the commission shall be paid the same fees and mileage as are allowed by law for witnesses in criminal cases.

§ 880.12. Evidence and testimony at executive and public sessions; protection of witnesses; penalties

A. The commission shall base its findings and reports only upon evidence and testimony given at public hearings. Prior to and at any time during or subsequent to the conduct of a public hearing the commission may go into execu-

tive session. It shall go into executive session upon the request of any member of the commission who states that in his opinion evidence or testimony being given or to be given at a public hearing may tend to degrade, defame or incriminate any person. In such executive session it shall afford the person who might be degraded, defamed or incriminated an opportunity to appear and be heard in the executive session, with a reasonable number of additional witnesses in his behalf requested by him, before deciding to receive such evidence or testimony in public hearing. If the commission should decide that such evidence or testimony should be heard in a public hearing, the evidence must be offered and filed anew in the public hearing and the testimony of the witness must actually be given at the public hearing, both without reference to the fact that the commission previously had viewed the evidence in executive session or heard the same or other testimony of the witness in executive session.

Should the commission determine to receive such evidence or testimony in public hearing, the person who might be degraded, defamed or incriminated thereby shall be given an opportunity at the public hearing to appear as a voluntary witness, or to file a sworn statement in his own behalf and submit brief, pertinent, sworn statements of others, or to submit to the commission a list of such persons as he may wish to have subpoenaed as additional witnesses. The actual issuance of any additional subpoenaes shall be in the discretion of the commission.

B. It shall be a misdemeanor for any member of the commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at any executive session. Whoever violates this Subsection shall be fined not more than one thousand dollars or be imprisoned for not more than one year, or both.

C. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right either to appear personally before the commission and testify in his own behalf as to matters relevant to the testimony or other evidence complained of or, in the alternative at the option of the commission, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

§ 880.13. Immunity of witnesses

Whenever in the judgment of the commission the testimony of any witness, or deposition thereof, or the production of books, papers or other evidence by any witness, in any matter pending before it, is necessary to the public interest and the proper discharge by the commission of its duties imposed by this Part, the commission may make application to the district court having jurisdiction over the place where the hearing is being held, or to the district court in and for the parish of East Baton Rouge, requesting that the witness be instructed to testify, depose or produce evidence subject to the provisions of this Part, and upon order of the court such witness shall not be excused from testifying or deposing, or from producing books, papers or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no such witness so ordered by the court shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-

incrimination, to testify, depose or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding against him in any court except for a prosecution for perjury or contempt committed while giving testimony, or while deposing or producing evidence under compulsion as provided herein.

§ 880.14. Misdemeanors and penalties

Whoever:

(1) Uses or attempts to use violence, force or threats, with the intent to influence the testimony or conduct of any witness or person about to be called as a witness at any hearing before the commission, whether in executive session or a public hearing, or in connection with any investigation ordered by the commission; or

(2) Uses or attempts to use violence, force or threats to the person, his family, or property of any witness on account of his having attended any session or hearing or investigation, or on account of his testifying or having testified with respect to any pending matter; or

(3) With intent to avoid, evade, prevent or obstruct compliance, wholly or partially, with any subpoena issued by the commission, removes from any place, conceals, destroys, mutilates, alters or by any means falsifies any documentary material subject to such subpoena; or

(4) By force or threats, or by wilful acts prevents, obstructs, impedes or interferes with, or attempts to prevent, obstruct, impede or interfere with the due exercise of rights or the performance by the commission of its duties as imposed by this Part shall be guilty of a misdemeanor and upon conviction shall be fined not more than two thousand dollars or be imprisoned for not more than two years, or both.

§ 880.15. Records of hearings

A. A complete and accurate record shall be kept of each public hearing, and any witness shall be entitled to a copy of his testimony at such hearing, at his own expense.

B. The records of any public hearing held by the commission, when properly authenticated and attested by the secretary of the commission, are public records and shall be subject to the provisions of Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950, as amended.

§ 880.16. Immunity of commission members and employees

No action, proceeding or decision of the commission, or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this Part, shall subject any member or employee thereof to any suit or liability for damages in connection therewith.

§ 880.17. Budget unit of state; reversion of funds

The commission shall be a separate budget unit of this state, as defined by law, and as such shall be subject to the provisions of Title 39 of the Louisiana Revised Statutes of 1950, as amended, and all other laws relating or applicable to budget units. Any funds appropriated to the commission which remain unexpended and unencumbered at the close of any fiscal year shall be remitted to the state general fund in accordance with law.

§ 880.18. Liberal construction; exclusion from Administrative Procedure Act

The provisions of this Part shall be liberally construed to effectuate the purpose for which it was enacted. The provisions of Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950, as amended, shall not apply to the Labor-Management Commission of Inquiry.

Section 2. The sum of Two Hundred Fifty Thousand ($250,000.00) Dollars, or so much thereof as may be necessary, is hereby appropriated out of the General Fund of the state of Louisiana for the fiscal year 1967-1968 to the Labor-Management Commission of Inquiry, to be used by said Commission for operations in connection with the purposes for which it is created.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not effect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

Section 5. The necessity for the immediate passage of this Act having been certified by the governor to the legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the governor.

/s/ VAIL M. DELONY
SPEAKER OF THE HOUSE OF REPRESENTATIVES

/s/ C. T. AYCOCK
LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE

/s/ JOHN J. McKEITHEN
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: July 22, 1967, at 10:52 A.M.

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER 124,349

PATRICK G. MARTONE

versus

CECYL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER and JOHN JULIEN McKEITHEN

ORIGINAL PETITION

The petition of PATRICK G. MARTONE, resident of East Baton Rouge Parish, State of Louisiana, complaining of Cecyl Morgan, Chairman and member of the Labor-Management Commission of Inquiry, William Redmann, Secretary and member of the Labor-Management Commission of Inquiry, Andrew P. Tugwell, State Treasurer of Louisiana, J. B. Lancaster, State Auditor of Louisiana, John Julien McKeithen, Governor of Louisiana, and the Labor-Management Commission, a body politic of the State of Louisiana, respectfully represents that:

1.

Petitioner is a taxpayer and citizen of the State of Louisiana and as such has an interest in the affairs of state government and in the expenditures of public funds; petitioner further alleges that his said interest and person rights have been adversely affected by the operative effects of the Legislative Act hereinafter mentioned.

2.

Petitioner alleges that Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, otherwise known and cited as R.S. 23:880.1—880.18 (hereinafter sometimes referred to simply as "said Act"), exists in violation of the provisions of the Constitutions of the State of Louisiana and of the United States of America and therefore should be declared null and void and the enforcement of its provisions and the expenditure of public funds in connection therewith should be enjoined in support whereof petitioner further gives this Honorable Court to understand the following:

3.

Petitioner alleges that said legislation purports to establish an administrative Commission of Inquiry for the avowed purpose of investigating activities involved in labor-management relations in the State of Louisiana; as a practical matter, however, said legislation has no legitimate legislative, executive, or judicial objective; in its conceptual context and practical implementation it violates elementary strictures of constitutional separation of powers and truncates and infringes the constitutional liberties of your petitioner and persons similarly situated.

4.

In essence said Commission of Inquiry is nothing but a trial agency, whose sole function is to expose the private affairs of individuals for the purpose of exposure only; by the terms of said Act inquiry is made an end in itself; it is not related to or in furtherance of a legitimate task of the Legislature; the Commission created by said Act re-

ports not to the Legislature, but to the Governor of the State only; and the nature of said reports is confined to its public findings as to criminal law violations of individuals; its members are appointed by the Governor only and serve at his pleasure; in the final analysis said Act creates an agency which is empowered to make findings which publicly brand individuals as criminal law violators but deny to such individuals the constitutional safeguards of confronting and cross-examining their accusers; in its practical implementation said Act creates a State propaganda agency, and installs the Commission members appointed by the Governor as propaganda ministers and, pursuant to the provisions of Section 880.6(D) "All public officials, personnel, employees and agents of all boards, commissions, departments and agencies of the State and of the political subdivisions of the State" are mobilized to act in concert with investigative employees of said Commission as a horde of agents to spy on the general public and assemble and collect any type evidence, including hearsay and gossip, to be used to scandalize, defame, degrade and subject to public scorn and obloquy those individuals whom said Commission may whimsically select as its victims.

5.

More particularly petitioner alleges that said Commission of Inquiry is not a legitimate agency of the Legislature, with selfsustaining authority and self-governing discretion; under the provisions of Section 880.1 it is an administrative agency whose powers of inquiry are to be exercised only on an ad hoc basis and only on those occasions, when, in the opinion of the Governor alone, that power should be exercised, all as is more particularly provided in Section 880.5 of said Act; thus the reins of control are vested exclusively in the already powerful hands of

the Governor of the State of Louisiana and the standards of judgment by which he is to be guided in unleashing the consummate power of depredation inherent in said Commission are so vague and indefinite as to offer no legally definable guidelines whatever, with the result that the Governor of the State of Louisiana thereby is invested with arbitrary and capricious powers to injure and damage your petitioner and those persons similarly situated.

6.

Pursuant to the provisions of Section 880.6(B) the Commission of Inquiry is expressly prohibited from engaging in legitimate fact-finding investigation leading to the discovery of relevant evidence in connection with labor-management relations, upon which to base any recommendation for remedial legislation, for as much as said Section provides:

> "The Commission shall have no power, authority or jurisdiction to investigate, hold hearings or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problem or dispute, but inquiry into alleged criminal acts shall not be improper because recital thereof may reflect upon some civil aspects thereof, and its power, authority or jurisdiction shall in no case extend to (1) any matter which is solely an 'unfair labor practice' or an 'unfair employment practice' or a legitimate labor dispute under the provisions of any federal or state law; or (2) any matter which relates to legitimate economic issues arising between labor and management or the manner in which such labor practices or economic issues are to be settled between the parties, whether by negotiation, arbitration, lock-out or strike; or (3) any matter which relates solely to the internal affairs of labor organizations, including but not neces-

sarily restricted to membership policies, election procedures, membership rights and like matter; or (4) any alleged acts of violence or threats of violence or so-called 'mass picketing' or like conduct by either an employer or a union, which is not related to bribery or extortion, as defined by law, but which is related only to an organizational objective of a labor union or which is related only to furthering the interests of one side or the other in a 'labor dispute', as that term is defined by federal or state law, such conduct being already regulated by and subject to the police power of the state, exercised throught such agencies as the Division of State Police; or (5) any matter which relates solely to the internal affairs of any business organization, including but not necessarily restricted to its labor and business policy and general operations, or (6) any matters which constitute a combination of any two or more of these. In addition, the Commission shall have no power, authority or jurisdiction to file, intervene in or in any manner participate in any civil judicial proceedings, except for the purpose of seeking the enforcement of a subpoena issued by it in accordance with the provisions of this part, or except for the institution of contempt proceedings as provided for in this part or except when the Commission has been made a defendant in any civil suit."

7.

To the contrary the scope of function of said Commission is narrowly limited to that of trial agency in that, pursuant to the provisions of Section 880.6(A), at the direction of the Governor, it shall investigate and hold hearings at which it shall receive evidence to ascertain the existence of "facts surrounding or pertaining to * * * any actual or probable violations of the criminal laws of this State or of the United States which relate to, arise out of

or are connected with problems or disputes in the field of labor-management relations" and "shall make findings with respect" thereto, its power in relation thereto being "investigatory and fact-finding only and shall be limited to matters which have been referred to it by the Governor and which are or may be violations of the criminal laws of the United States or of this State which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations."

8.

Pursuant to the provisions of Section 880.7 of said Act, while acting in its capacity as a trial agency, said Commission of Inquiry is under the mandatory duty of making findings of fact; these "findings" are confined to the question whether or not there is probable cause to believe that there are or have been violations of any criminal law or laws of the United States or of the State of Louisiana arising out of or in connection with or as a result of the matter which is the subject of the investigation; furthermore, in stating its "findings", said Commission of Inquiry is authorized to single out individual citizens and to brand them as violators of the criminal laws of the State of Louisiana or of the Federal government; moreover said "findings" must be "publicized"; additionally the public airing of said "findings" must be preceded by a public hearing; after citizens of Louisiana shall have been so publicly branded and scandalized as criminals and criminal law violators, said Commission may then make its recommendations to the Governor as to the type action it wishes the Governor to take against such Louisiana citizens, which would include a request to have the Governor ask the Attorney General to further punish these Louisiana citizens, already convicted in the public mind as criminals, by caus-

ing the criminal prosecution of them, pursuant to Section 880.7(D).

9.

Throughout the process of the public trial and public condemnation of any Louisiana citizen by the said Commission, said citizen has no right to examine or cross-examine any witness who may testify against him; benevolently, however, such a citizen is accorded a token gift; according to the provision of Section 880.10(B) "He may submit to the Commission, proposed questions to be asked" to such witness, and, accordingly as it may be possessed of the grace of kindness "the Commission shall ask the witness such of the questions as it deems to be appropriate to its inquiry."

10

Though the functions of said Commission is not related to or in furtherance of a legitimate task of the Legislature, but to the contrary it functions as a trial agency, under the exclusive control of the Governor, whose only mission is to publicly convict citizens, as criminals or criminal law violators, it is possessed of the awesome combined powers of the judicial and executive branches of State government in aid of enforcing its predatory aims of public depredation of Louisiana citizens; pursuant to the provisions of 880.8 it possesses the power of compulsory process to compel the attendance of witnesses and to require the production of books, records, documents and other evidence deemed relevant or material to any executive session or public hearing; it has power to collect evidence by deposition and is further empowered to enforce its will by punishment for contempt; pursuant to the provisions of Section 880.6(D) all public officials and employees of State govern-

ment, including the political subdivisions thereof, are mobilized and mandatorily impressed into service in a cooperative effort of assisting said Commission in its effort to effectively and comprehensively carry out its functions and duties; furthermore pursuant to the provisions of Section 880.6(C) "upon the request of the Governor, the Commission may assign all or part of its investigatory forces to the State Police to assist them in investigating any violations or probable violations of law and in apprehending all persons engaged in violation of law. During said assignment said investigators shall be under the supervision of the Director of the Department of Public Safety and have all the power and authority of other members of the State Police"; thus, by virtue of the provisions of said Act, all of the employees and officials of State government, including all political subdivisions thereof, which would of necessity include all of the police forces of all municipalities, and all investigatory employees of the Commission, together with every member of the State Police of Louisiana, are mobilized by said Act as a State-wide police force with plenary power and authority to investigate any violations or probable violations of law and to apprehend and imprison persons so allegedly engaged; there is thereby created a veritable police state in Louisiana.

11

Arrayed against such an ominous police structure is your petitioner and persons similarly situated; petitioner alleges that said Act deprives citizens of the State of Louisiana of the right to be secure in their person and in their property, including the right to privacy, the right not to be scandalized and defamed, the right to earn a living without molestation and oppression, without due process of law as secured to petitioner and citizens of Louisiana

by the provisions of Article 1, Section 2 of the Constitution of Louisiana and the Fourteenth Amendment to the Constitution of the United States, in that said Act authorizes and empowers State officials to (a) publicly expose the private affairs of petitioner and citizens similarly situated solely for the purpose of exposure, to (b) publicly convict citizens as criminals or as criminal law violators, to (c) publicly scandalize, degrade and subject to public scorn and obloquy citizens of Louisiana, including petitioner, without constitutional safeguards, such as the effective assistance of counsel, the right of confrontation, examination and cross-examination of witnesses, compulsory process for the attendance of witnesses, effective and meaningful rules of evidence, meaningful and definable standards of guilt or innocence and the right of appeal.

Moreover petitioner alleges that while said Act authorizes and empowers State officials to scandalize, defame, degrade and depredate citizens of Louisiana, including petitioner, with or without just cause, said Act by express provision shuts the doors of all courts of Louisiana against citizens of Louisiana, including petitioner, for redress of grievances, including injury to person and reputation, by expressly providing in Section 880.16 "no action, proceeding, or decision of the Commission or any of its members or employees in the exercise of its duties, functions and obligations in conformity with the provisions of this part, shall subject any member or employee thereof to any suit or liability for damages in connection therewith"; said section or provision additionally violates the constitutional rights of your petitioner and those citizens similarly situated in that said section is contrary to the provisions of Article 1, Section 6 of the Constitution of Louisiana which provides that: "All courts shall be open, and every person for injury done him in rights, lands, goods, person or reputation shall have adequate remedy by due process of law

and justice administered without denial, partiality or unreasonable delay"; and constitutes a denial and taking of property without due process and equal protection.

13

Not only do the provisions of said Act per se deprive petitioner and those citizens similarly situated of constitutional liberties, but the officers, agents, employees, and representatives of said Commission of Inquiry by their acts and deeds have applied the provisions of said Act discriminatorily and illegally against your petitioner and persons known to your petitioner in such a manner as to deny to your petitioner and those similarly situated the equal protection of State laws and due process of law.

14

For example, petitioner is informed, believes and therefore states that certain representatives of said Commission of Inquiry, including one Nick Ross, have extracted statements from third persons through acts of duress, intimidation and corrupt practices, including promises of immunities and things of value, extended to such third persons, solely for the purpose of fabricating charges against your petitioner and others solely for the purpose of bringing about the criminal prosecution and ultimate imprisonment of your petitioner and others similarly situated.

15

More specifically your petitioner alleges that representatives of said Commission of Inquiry, including said Nick Ross, one Capt. Head, and others, including an alleged former F.B.I. agent whose names are unknown to your pe-

titioner, fraudulently induced one Angelo Vanchiere, Jr. and Daniel H. Stuntz to make and subscribe to statements and utterances implicating your petitioner, as well as Edward Grady Partin, and one Chuck Bourgeois in criminal activities antedating the creation of said Commission of Inquiry by some three to four years, and otherwise by threatening said Angelo Vanchiere, Jr. and Daniel H. Stuntz and alternately promising said persons things of value and ultimately giving to the said Daniel H. Stuntz Two Hundred Fifty ($250.00) Dollars in cash plus a 1962 Ford fordor automobile bearing serial #2076X132422 plus a grant of immunity from prosecution of any type, in return for such incriminatory ufterances and statements aforesaid; according to your petitioner's information, said representatives of said Commission of Inquiry caused the said Daniel Stuntz to execute a document which purports to attest to the fact that the Two Hundred Fifty ($250.00) Dollars in cash received by the said Stuntz was in return for services rendered to said Commission of Inquiry as an employee functioning in Lafayette, Louisiana, where in truth and in fact said Daniel Stuntz never was employed by and never worked for said Commission of Inquiry.

Petitioner further alleges that said representatives of said Commission of Inquiry, after fraudulently securing said utterances or statements as herein aforesaid did make public said evidentiary statements by disclosing the same to third parties other than officers or employees of said Commission in an effort to defame and degrade petitioner and others aforesaid; that said disclosure was made with the full knowledge of the Chairman of said commission of Inquiry knowing that to do so constituted a breach of the provisions of Section 880.12(B) of said Act, which reads:

> "It shall be a misdemeanor for any member of the Commission, its counsel or employees, to make public any evidence or testimony taken at a private

investigation or at any executive session. Whoever violates this sub-section shall be fined not more than One Thousand Dollars or be imprisoned for not more than one year or both."

17

Said Commission and the members and officers thereof have knowingly condoned said public disclosure simply because they are possessed by a bias and prejudice against your petitioner and Edward Grady Partin and those associated with your petitioner and particularly those members of the Teamsters Union Local No. 5 of Baton Rouge, Louisiana, and said violation of said section by said representatives of said Commission constitutes but one of a series of acts in furtherance of a discriminatory practice and policy toward your petitioner and those similarly situated; petitioner is informed, believes and therefore states furthermore that said representatives of said Commission, acting in concert and conspiracy among themselves and with others to bring about the criminal prosecution of your petitioner, Edward Grady Partin and others knowingly presented or caused to be presented said fraudulent statements, obtained in violation of State law, to the East Baton Rouge Parish Grand Jury during its current session: the presentation of said fraudulent statements to said Grand Jury is but another affirmative effort on the part of representatives of said Commission to illegally and wrongfully bring about the criminal prosecution of petitioner, Edward Grady Partin and others aforesaid; petitioner is informed, believes and therefore states that the said Angelo Vanchiere, Jr. and Daniel H. Stuntz have repudiated said fraudulent statements and characterized such statements for what they are, namely, fraudulent and false statements, and have made known and stated under oath that said statements were given as a result of threats

directed toward them and promises made to them and gifts received by them.

18

Petitioner alleges, based on information heretofore recited, and otherwise, that the sole purpose for which the Labor-Management Commission of Inquiry was created was to be used as an instrument of the State to scandalize and injure your petitioner, Edward Grady Partin and members of the Teamsters Local Union No. 5 of East Baton Rouge Parish, Louisiana and persons, firms and organizations doing business with or otherwise associated with said persons or Union.

19

Petitioner further alleges that said Legislative Act, in creating the Labor-Management Commission of Inquiry, defining its function and in organizing its power, has in fact and law created an administrative trial agency with authority to make findings of fact as to the guilt or innocence of Louisiana citizens in matters of criminal law violations; said Act, therefore, is additionally null and void for the reason that in so doing it violates the provisions of Article 1, Sections 1 and 2 of the Louisiana Constitution in that it instances an attempt to invest the legislative or executive branches of State government or both, with authority to exercise power properly and exclusively belonging to the judicial branch of government, in that only the judicial branch of government has the constitutional authority to determine the guilt or innocence of citizens of Louisiana in matters of criminal law violations.

20

Further petitioner alleges that said act furthermore is in violation of the provisions of the Constitution of the

State of Louisiana and particularly Article 14, Section 15 thereof to the extent that said Act by virtue of the provisions of Section 880.6(C) installs and invests employees of said Commission of Inquiry with power and authority and as members of the Louisiana State Police.

21

Petitioner further alleges that said legislative Act is additionally null and void for the reason that it exists in violation of the provisions of Article 3, Section 16 of the Constitution of the State of Louisiana in that said legislative Act embraces more than one object and its title is not indicative of its objects.

22

More specifically petitioner alleges that while said Act purports to establish an administrative trial agency to conduct investigations and hearings and make findings of fact, it has additional objects; by virtue of the provisions of Section 880.6(C), it has the additional object of creating new State Police Officers in circumvention of the Civil Service Law established by the provisions of Article 14, Section 15 of the Louisiana Constitution; by virtue of the provisions of Section 880.14 it has the additional object of creating and defining new crimes in the nature of misdemeanors and fixing penalties therefor; by virtue of the provisions of Section 880.13 it has the additional object of creating immunity against prosecution for criminal activities by both the State of Louisiana and the United States Government; by virtue of the provisions of Section 880.16 it has the additional object of creating immunity for the Commission members and employees of said Commission from any liability for damages which otherwise they might

incur for conduct in the performance of duty; that said Act has more than one object is made additionally manifest by the very provision of the title thereof which refers to "purposes for which said Commission is created".

23

Petitioner further alleges that the object of creating and appointing members of the Louisiana State Police falling outside the pale of the Civil Service Law of the State and of exempting Commission members and employees of the Commission from any liability for damages in connection with the performance of their duties are objects and purposes not indicated by the title of said Act.

24

Petitioner further alleges that said Legislative Act is additionally unconstitutional in that it exists in violation of the provisions of Article 4, Section 9 of the Constitution of the State of Louisiana in that said Act, by virtue of the provisions of Section 880.18, Section 2, effects an appropriation out of the general fund of the State of Louisiana of the sum of Two Hundred Fifty Thousand ($250,000.00) Dollars; under the provisions of Article 4, Section 9 of the Louisiana Constitution, however, such an appropriation is valid only where the legislative Act by virtue of which it exists embraces but one object; said Act, however, contains multiple objects as hereinabove recited and therefore Section 880.18, Section 2, to the extent that it attempts to appropriate Two Hundred Fifty Thousand ($250,000.00) Dollars is null and void.

25

Petitioner is informed and being so informed believes and therefore states that officers, agents and representa-

tives of said Commission of Inquiry intend to continue to enforce the provisions of said legislative Act and furthermore said officers, agents and representatives of said Commission are now taking steps and intend to continue to take steps, through the employment of the provisions of said legislative Act and through the fraudulent ways and means herein aforesaid, to scandalize, defame, degrade and otherwise injure and to subject your petitioner and those similarly situated to public scorn and obloquy, and to bring about the criminal prosecution and conviction of your petitioner and those similarly situated; your petitioner has no adequate remedy at law to prevent said officers, agents and representatives of said Commission of Inquiry from so injuring your petitioner and those similarly situated; as herein aforesaid said legislative Act purports to grant to said officers, agents and representatives absolute immunity against any and all claims for damages resulting from such injury occasioned by the conduct of said officers, agents and representatives of said Commission of Inquiry, unless, therefore, this Honorable Court in the exercise of its equity powers issue an injunction directed against said officers, agents and representatives of said Commission of Inquiry preventing them and each of them from taking steps leading to the infliction of injury and punishment on your petitioner and those similarly situated by the enforcement of the provisions of said Act and the employment of the fraudulent practices aforesaid, your petitioner and those similarly situated will suffer irreparable injury.

26

Your petitioner is informed and being so informed, believes and therefore states that the members of said Commission of Inquiry have scheduled a public hearing for Monday, December 18, 1967, during the course of which said members of said Commission intend to elicit testimony

from witnesses designed to scandalize, degrade, deface and subject your petitioner and those similarly situated to public scorn, ridicule and obloquy as to which your petitioner has no adequate remedy as herein aforesaid; the exigencies of the case are such that your petitioner and those similarly situated will suffer irreparable injury before a hearing on a preliminary injunction can be conducted; that therefore a temporary restraining order should issue immediately and before a hearing enjoining, prohibiting and restraining the officers, agents and representatives of the Labor-Management Commission of Inquiry from taking any steps whatsoever leading to or in connection with the enforcement of the provisions of the legislative Act herein mentioned.

27

Petitioner believes and therefore alleges that the Labor-Management Commission of Inquiry, its officers, agents, representatives and employees will have been and will continue to draw warrants upon the State's Treasurer for the disbursement of public money in connection with the function of said Commission of Inquiry and that unless Andrew P. Tugwell, State Treasurer, is enjoined and prohibited by this court as hereinafter recited, he will honor said warrants and will authorize the disbursement of public funds accordingly; similarly unless an injunction do issue against J. B. Lancaster, State Auditor, he will likewise permit the withdrawal and expenditure of such public funds; the exigencies of this case are such that unless a temporary restraining issue immediately and before a hearing there will result irrecoverable expenditure of public funds and your petitioner and citizens of the State of Louisiana similarly will consequently suffer an irreparable injury in the nature of irrecoverable loss of such public funds.

WHEREFORE PETITIONER PRAYS that Cecyl Morgan, William Redmann, Andrew P. Tugwell, J. B. Lancaster, John Julien McKeithen and the Labor-Management Commission of Inquiry, by and through its Chairman, Cecyl Morgan, be duly cited and served with process as provided for by law.

PETITIONER FURTHER PRAYS that temporary restraining order do issue herein immediately and before a hearing restraining, enjoining and prohibiting Cecyl Morgan, William Redmann, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, and John Julien McKeithen, Governor of Louisiana, from in any manner enforcing, implementing or carrying out or attempting to enforce, implement or carry out the provisions of Act No. 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, known and cited as R.S. 23:880.1—880.18, by conducting any investigation or hearing of any type, including the interrogation of any person or the eliciting or attempted eliciting of any evidence from any person, or by making or uttering or communicating any findings or evidence as to the existence or non-existence of any criminal law violations or as to the involvement of any person, firm, corporation or other legal entity in any criminal law violation of any type whatever and/or by incurring any obligations or debts, or expending any public funds or requesting or directing the expenditure of public funds in connection with the function of the Labor-Management Commission of Inquiry; that a temporary restraining order furthermore issue restraining, enjoining and prohibiting Andrew P. Tugwell, State Treasurer, and J. B. Lancaster, State Auditor, their agents, representatives and employees or either or any of them, from receiving, paying or making any other or further payments or expenditures of the Two Hundred Fifty Thousand ($250,-

000.00) Dollars specially appropriated by the Legislature in Section 880.18, Sub-Section 2 of said Act.

PETITIONER FURTHER PRAYS that said defendants be further ordered to show cause on a day and hour to be fixed by this Honorable Court why a preliminary injunction should not issue herein, in the nature, to the extent and for the purposes of the temporary restraining order herein prayed for.

PETITIONER FURTHER PRAYS that after due proceedings had there be judgment herein in favor of your petitioner and against the Labor-Management Commission of Inquiry, Cecyl Morgan, William Redmann, Andrew P. Tugwell, J. B. Lancaster and John Julien McKeithen, ordering and decreeing Act No. 2 of the First Extraordinary Session of the Louisiana Session for 1967, known and cited as R.S. 23:880.1—880.18, to be unconstitutional, null and void and permanently enjoining the enforcement of said Act by restraining, enjoining and prohibiting Cecyl Morgan, William Redmann, John Julien McKeithen, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, from in any manner enforcing, implementing or carrying out or attempting to enforce, implement or carry out the provisions of said Act by, among other acts and deeds, conducting any investigation or hearing of any type, including the interrogation of any person or the eliciting or attempted eliciting of any evidence from any person, or by making or uttering or communicating any findings or evidence as to the existence or non-existence of any criminal law violation or as to the involvement of any person, firm, corporation or other legal entity in any criminal law violations of any type whatever and/or by incurring any obligations or debts or expending any public funds or requesting or directing the expenditure of

public funds in connection with the function of said Labor-Management Commission of Inquiry and further enjoining, restraining and prohibiting Andrew P. Tugwell, State Treasurer, and J. B. Lancaster, State Auditor, their agents, representatives and employees or either or any of them, from receiving, paying or making any other or further payments or expenditures of the Two Hundred Fifty Thousand ($250,000.00) Dollars specially appropriated by the Legislature by virtue of the provisions of said Act.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON
ATTORNEY FOR PETITIONER

OF COUNSEL:
J. Minos Simon
John Rixie Mouton
Noe P. Giuffrida

FIRST SUPPLEMENTAL PETITION

Now into court through undersigned counsel comes PATRICK G. MARTONE who respectfully represents that:

1.

Plaintiff alleges that the Labor-Management Commission of Inquiry, acting through its agents, employees and representatives, is engaged in unbelievable squandering of public funds, including, according to plaintiff's information, instances of nepotism and double-dipping.

Among the many examples of such gross squandering of public funds are the following:

2.

Plaintiff is informed, believes and therefore states that defendant McKeithen, acting under the unconstitutional usurpation of power conferred upon him by the provisions of Section 880.6(c) of the Labor-Management Commission of Inquiry Act, requested the Commission of Inquiry to assign Joseph A. Oster and Raymond Ruiz, investigators for the Labor-Management Commission of Inquiry, to the Louisiana State Police and that the said Commission of Inquiry acting in response to said request, effected the assignment of said investigators to the Louisiana State Police; that by virtue of the provisions of said Act aforesaid said assignment invested said investigators with "all the power and authority of other members of the State Police"; thus said investigators by virtue of said administrative Act became members of the State Police though they failed and continue to fail to qualify under the Civil Service or Merit System of the State of Louisiana as mandatorily prescribed by the provisions of Article 14, Section 15 of the Constitution of the State of Louisiana.

3.

Though not required to stand an examination to qualify as members of the State Police and not in fact qualified as members of the State Police, said Joseph A. Oster and Raymond Ruiz assumed the official function of members of the State Police and according to your plaintiff's information on or about December 30, 1967 said Joseph A. Oster and Raymond Ruiz conducted an alleged raid in Iberville Parish, Louisiana, in the process of which they seized four (4) slot machines plus two (2) "spare parts" mechanisms.

4.

Plaintiff alleges that members of the State Police of Louisiana heretofore have demonstrated beyond a doubt that they are duly qualified pursuant to the Civil Service Laws of the State of Louisiana and are competent to seize slot machines, if any exist in the State of Louisiana, and to stamp out gambling, including bingo, if defendant McKeithen directs said State Police to do so, as he has heretofore claimed that he did, except as to gambling by bingo; instead of engaging the services of the competent members of the Louisiana State Police who have been qualified by the Civil Service Board of the State of Louisiana, said defendant McKeithen bypassed these duly qualified members of the Louisiana State Police; on the contrary he requested that the said Joseph A. Oster and Raymond Ruiz assume the function of members of the State Police for the purpose of conducting said raid in Iberville Parish, Louisiana aforesaid;

5.

Said assignment was not only deplorably unnecessary, because, as aforesaid, there was available competent members of the Louisiana State Police to conduct the raid aforesaid, but said assignment instances a reckless abandonment of official responsibility and a reckless disregard of the wise expenditure of public funds in that said Joseph Oster, while acting as a member of the State Police, was being paid and continues to be paid a salary of Seventy Five ($75.00) Dollars per day; and said Raymond Ruiz, while acting as a member of the State Police, was being paid and continues to be paid a salary of Fifty ($50.00) Dollars per day.

6.

More than this plaintiff alleges on information that said assignment instances not only a reckless squandering of public funds, but a flagrant and willful misuse and abuse of power of defendant McKeithen, made possible only by the unconstitutional provisions of the Labor-Management Commission of Inquiry Act, and the cooperation of some members thereof, employees, representatives and agents thereof as well as others.

7.

Plaintiff is further informed, believes and therefore states that defendant McKeithen, acting in concert with some members of the Commission of Inquiry, its agents, employees and representatives and others, is willfully and intentionally using the Commission of Inquiry as an instrument of intimidation to bludgeon into submission or into political oblivion those who disagree with him politically or otherwise, or who may be offensive to the economic or privileged interest of his friends or who may stand in his way, or who McKeithen may think stands in his way, to achieving total political domination over the entire State of Louisiana.

8.

Plaintiff is informed, believes and therefore alleges that the aforesaid assignment of Oster and Ruiz by defendant McKeithen was and continues to be an act in furtherance of the aforesaid conspiracy, in that it was an act in furtherance of McKeithen's intention to discredit and injure Jessel Ourso, Sheriff of Iberville Parish, Louisiana; furthermore McKeithen, acting in concert with others as aforesaid, has caused said Sheriff Ourso to be

subpoenaed to testify before the Commission of Inquiry on February 8, 1968; ostensibly Ourso is to testify concerning labor-management problems; in truth and in fact, however, the real purpose is to create an opportunity for certain willful members of the Commission of Inquiry to degrade and attempt to discredit said Sheriff Ourso by the use of hearsay and otherwise incompetent evidence, so as, in combination with the alleged raid and seizure of slot machines, to lay an ominous foundation to be used by the said McKeithen as a basis to address the said Sheriff Ourso out of office at the upcoming May Session of the Louisiana Legislature.

9.

Plaintiff is further informed, believes and therefore states that the said McKeithen and those acting in concert with him seek to discredit labor unions of the State of Louisiana by calumniating and degrading labor union leaders, while cunningly singling out a numbered few for praise, with a view to establishing a public climate and legislative ferment for the passage of a right-to-work bill designed and purposed to destroy the effectiveness of labor organizations in the State of Louisiana.

10.

According to your plaintiff's information further examples of squandering of public funds are as follows: Not one investigator is paid less than Fifty ($50.00) Dollars per day. The salaries of the following investigators are: H. Lynn Augustine, Seventy Five ($75.00) Dollars per day; Maurice F. Head, Fifty ($50.00) Dollars per day; Edward J. Roussel, Fifty ($50.00) Dollars per day; Raymond Ruiz, Fifty ($50.00) Dollars per day; Joseph Oster,

Seventy Five ($75.00) Dollars per day; Robert A. Wilson, Fifty ($50.00) Dollars per day; A. Harry Roberts, One Hundred ($100.00) Dollars per day; James Curley, Fifty ($50.00) Dollars per day.

11.

Furthermore, according to plaintiff's information, A. Harry Roberts has received directly or indirectly a total in excess of Seventeen Thousand ($17,000.00) Dollars since August 1, 1967; he received in salary Ten Thousand Six Hundred Seventy Five ($10,675.00) Dollars. In addition to this he received as travelling expenses the sum of Four Hundred Fifty Two and 67/100 ($452.67) Dollars; according to plaintiff's information A. Harry Roberts is the owner of Southern Research Co., Inc.; the Commission of Inquiry according to plaintiff's information, paid to Southern Research Co., Inc. for what is designated as "fees and expenses of A. Harry Roberts" in addition to the salary heretofore mentioned, on September 1, 1967, the sum of Two Thousand Seven Hundred Eighty Four and 77/100 ($2,784.77) Dollars, and on October 31, 1967, the sum of Two Thousand Two Hundred Eighty Eight and 49/100 ($2,288.49) Dollars.

12.

Plaintiff is informed, believes and therefore states that said Commission of Inquiry paid the said Joseph A. Oster as salary since August 1, 1967 the sum of Six Thousand Four Hundred Forty and 60/100 ($6,440.60) Dollars, up to December 11, 1967, and the sum of Seven Hundred Eighty Nine and 64/100 ($789.64) Dollars in travelling expenses as of December 11, 1967; said Raymond Ruiz received in salary and expenses the sum of Four Thousand Seven Hundred Ten and 94/100 ($4,710.94). Dollars.

13.

According to your plaintiff's information one Roger Brandon is a relative of A. Harry Roberts; according to your plaintiff's information the Commission of Inquiry paid to Aero-Mayflower Transit Co. the sum of One Thousand Sixty Five and 50/100 ($1,065.50) Dollars to move the belongings of Roger Brandon from the State of California to the State of Louisiana, in addition to which said Commission of Inquiry on October 31, 1967 paid to the said Roger Brandon that which is labeled as travel expenses, the sum of One Thousand Forty Three and 67/100 ($1,043.67) Dollars; the said Brandon was paid further travelling expense on October 30 in the sum of Ninety Four and 50/100 ($94.50) Dollars and on December 11 the sum of One Hundred Thirty Three and 70/100 ($133.70) Dollars; said Roger Brandon was paid an amount for salary on October 31 of Four Hundred Seventy One and 37/100 ($471.37) Dollars and on November 30, 1967 he was paid twice, one in the sum of Four Hundred Seventy One and 76/100 ($471.76) Dollars and the other in the sum of Four Hundred Fifty One and 15/100 ($451.15) Dollars, purportedly as salary.

14.

The composition of the Commission of Inquiry is such that an overwhelming number of its members, agents and representatives, by virtue of their background, training, current interest and inclination, is opposed to the common laborer and to labor unions, and these members therefore have a bias and prejudice against plaintiff and those similarly situated; these members have, continue, and intend to continue to degrade and injure your plaintiff and those similarly situated.

15.

Furthermore, A. Harry Roberts, chief investigator for the Commission of Inquiry, is notoriously known and in fact is a representative of management in those areas of acute controversy between labor and management; said A. Harry Roberts, according to your plaintiff's information, is owner of Southern Research Co., Inc., and he and his said corporation, for many years preceding the creation of the Commission of Inquiry, have been engaged by innumerable representatives of management to advocate the cause of management in opposition to that of labor and to engage in practices disruptive and degrading of labor organizations and their leaders and representatives.

16.

In addition to being owner of Southern Research Co., Inc., plaintiff is informed, believes and therefore states that the said A. Harry Roberts owns a fifty (50) percent interest in Joseph A. Oster & Associates, Inc., an anti-labor investigative agency comparable to Southern Research Co., Inc., located in New Orleans, Louisiana; according to plaintiff's information Joseph A. Oster, an investigator for the Commission of Inquiry, owns the remaining one half interest of said corporation; A. Harry Roberts, acting as chief investigator for the Commission of Inquiry, knowing of his financial interest in Joseph A. Oster, nevertheless recommended and caused the hiring of the said Joseph Oster as an investigator for the Commission of Inquiry at a salary of Seventy Five ($75.00) Dollars per day plus travelling expenses; for the reason herein aforesaid and otherwise, the said A. Harry Roberts is knowingly using the Commission of Inquiry and his position therewith as a means of improperly enhancing his fi-

nancial interest and promoting his private estate by promoting and enriching himself, Southern Research Co., Inc. and Joseph A. Oster & Associates, Inc.

17.

Moreover, plaintiff alleges that investigators for the Commission of Inquiry continue to intimidate and threaten witnesses; more particularly plaintiff is informed, believes and therefore alleges that on December 29, 1967, Nick Ross, one of the investigators for the Commission of Inquiry in the company of James Curley, another investigator, threatened one Daniel Stuntz, a witness under subpoena in this case, in an effort to influence his testimony in this case;

18.

More specifically plaintiff alleges that said Nick Ross accosted said Stuntz at the Caroussel Lounge located along U.S. highway 190 in West Baton Rouge Parish, Louisiana at about 9:30 P.M., December 29, 1967; on this occasion said Ross ordered Stuntz to sit at a table with said Ross and Curley and then proceeded to curse and villify said Stuntz, calling him a bum, punk, S.O.B., bastard and similary derogatory epithets, and told said Stuntz there was no place he, Stuntz, could go to hide from said Ross as said Ross would "get" him; that he, Stuntz, would have no peace, if he remained in East Baton Rouge Parish; furthermore, said Ross told Stuntz: "Punk, you know I can whip you" and in the same breath and in the same aggressively hostile tone, he said further in an effort to intimidate said Stuntz into retracting a statement favorable to plaintiff, "You know you didn't lie to me downtown"; said Ross further told Stuntz: "I'll get you, that God damn

Ed Partin, that no good Minos Simon and Martone, if its the last thing I do before I die."; Stuntz tried to leave, but said Ross ordered him to remain, and when Stuntz finally was permitted to leave, Ross then warned: "I'll whip you with my hands tied behind my back";

19.

Thus defendants and their agents are willfully obstructing the due course of justice, attempting to deprive plaintiff of constitutional due process and equal protection, by intimidating his witnesses and his attorney as aforesaid.

WHEREFORE PLAINTIFF PRAYS for leave of court to file the foregoing supplemental and amending petition and after due proceedings had there be judgment herein in favor of plaintiff and defendants as prayed for in his original petition.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON
ATTORNEY FOR PLAINTIFF

APPENDIX C

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

NUMBER 124,349, DOCKET 2

PATRICK G. MARTONE

vs.

CECYL MORGAN, ET AL.

REASONS FOR JUDGMENT

The plaintiff attacks the constitutionality of Act Number 2 of the Extraordinary Session of the Legislature of 1967 and seeks to enjoin the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, and the Honorable John J. McKeithen, Governor of the State of Louisiana, from in any manner enforcing and carrying out the provisions of said act. Relief by injunction is also sought against the Honorable Andrew P. Tugwell prohibiting him from making payments of funds to carry out the provisions of said act.

The preamble of the act states that unprecedented conditions then existed in the state under which there had been a shut-down of construction work involving industrial development projects giving employment to thousands of persons and vitally affecting the public interest and threatening the orderly conduct of normal labor-management relations, and in connection with the aforesaid conditions that there had been allegations and accusations of violations of state and federal criminal laws which should be thoroughly investigated in the public interest.

It is further stated therein that in order to supplement and assist the efforts and activities of the several

district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States that it was imperative that additional investigative facilities on a state-wide basis be made available and that the Governor of the State of Louisiana should be empowered to take immediate action in the then existing situation and in any other similar emergency that may arise in the future by which facts causing or contributing to such conditions may be investigated.

Thereafter the act created a Labor-Management Commission of Inquiry and charged it as follows:

> "Section 880.6. Public hearings, jurisdiction of commission
>
> "A. Whenever the governor refers any matter to the commission, it shall, as expeditiously as practicable, investigate and hold hearings at which it shall receive testimony and documentary evidence, or either of them, and it shall ascertain the facts surrounding or pertaining to and shall make findings with respect to any actual or probable violations of the criminal laws of this state or of the United States *which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.* The power, authority or jurisdiction of the commission in the conduct of any investigation and also during the course of any executive session or public hearing held by it shall be investigatory and fact finding only and shall be limited to matters which have been referred to it by the governor and which are or may be violations of the criminal laws of the United States or of this state *which relate to, arise out of or are connected with problems or disputes in the field of labor-management relations.*" (Emphasis, the Court's)

There are other provisions excepting certain matters

from the jurisdiction of the commission which are not at the moment pertinent.

Two of the grounds upon which the statute are attacked can be disposed of quickly. The contention that it embraces more than one object and is not properly titled do not, in the Court's opinion, warrant serious consideration. The statute falls within the range permitted by the jurisprudence of the state. The contention that the attachment of investigators to the State Police violates the Civil Service amendment is likewise without merit. Although such investigators have the power and authority of other members of State Police, they are not in fact members of the State Police, and in my opinion have no jurisdiction whatsoever over any investigation not related to, arising out of, or connected with violation of criminal laws in the field of labor-management relations. (Section 880.6-A and 800.7-B).

The principal attack made on the constitutionality of the statute is based essentially on the grounds that it fails to provide witnesses summoned before it with the basic constitutional safeguards as guaranteed by the state and federal constitutions such as the effective assistance of counsel, the right of confrontation, examination and cross-examination of witnesses, compulsory process for attendance of witnesses, effective and meaningful rules of evidence, meaningful and definable standards of guilt or innocence, and the right of appeal.

The act does not make provision for those who are under investigation to be confronted with their accusers or witnesses who appear against them to cross-examine any of said witnesses that may appear against them except through the means of submitting to the commission proposed questions to be asked of the witnesses appearing before the commission and which questions shall only be

asked by the commission provided that it deems it appropriate to its inquiry. In other words, counsel for any witness does not have an unfettered right to cross-examine any other witness, and neither does he have an absolute right to call witnesses in his own behalf, although he may request the same.

The statute does provide for certain rights of witnesses such as to guarantee to them advance knowledge of the subject of the investigation, granting to them the right to object to questions or series of questions propounded to them, granting to them the right to be adequately informed as to the purpose of the investigation, granting to each witness time and additional time in which to prepare for the hearing, and granting to the witness the right to be accompanied by counsel so that he may be advised of his rights and may be questioned by counsel concerning relevant matters.

Counsel for neither party has favored the Court with any Louisiana cases directly in point, and the Court in its own research has found none. There is, however, a very comprehensive decision of the United States Supreme Court which the Court feels contains a full discussion of the principles of law which should be dispositive of this case, and the Court refers to the case of *Hannah v. Larch*, (1960), 363 U.S. 420, 5 L. Ed. 2d 1307, 80 S. Ct. 1502.

Before getting into a discussion of these principles, let me say that the Court gives no weight whatsoever to the political accusations made by and the improper motives ascribed to the proponents of the legislation in question by petitioner, and while the Court shares the Governor's concern about the effect of an adverse decision on the "image" of the state which he has so assiduously cultivated, it is not the Court's prerogative to decide cases of this sort on the basis of the wishes of the majority, or on

popular opinion, or even on one's own conception of the public good, nor is it the Court's function to decide the need for or wisdom of the legislation involved. The sole function of the Court is to apply the legal principles as it understands them to the statute in question and either sustain its constitutionality or rule it invalid.

Certainly, as Justice Frankfurter said in the *Hannah* case, it is important that those charged with the responsibility of governing not be unduly confined by "doctrinaire conceptions of due process" and that the question of whether or not the procedure in question offends the rudiments of fair play "is not to be tested by loose generalities or sentiments abstractly appealing." The precise nature of the interest alleged to be adversely affected or of the freedom of action claimed to be curtailed, the manner in which this is to be done and the reasons for doing it, the balance of individual hurt and the justifying public good—these and such like are the considerations, avowed or implicit, that determine the judicial judgment when appeal is made to "due process."

By the same token, as Justice Douglas said in his dissenting opinion in the same case, "We live and work under a Constitution. The temptation of many men of good will is to cut corners, take shortcuts and reach the desired end regardless of the means." With this in mind, it is the Court's appreciation of the law that as a general rule "where governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals," procedural safeguards traditionally associated with the judicial process must be followed, such as the effective assistance of counsel, the right of confrontation, examination and cross-examination of witnesses, compulsory process for the attendance of witnesses, effective and meaningful rules of evidence, meaningful and

definable standards of guilt or innocence and the right of appeal. On the contrary, where "governmental action does not partake of an adjudication, as, for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used." However, it is also basic that each case must be decided on its own; that is, the requirements of due process vary with the type of proceeding involved.

Were the statute involved one which clearly falls into the adjudicatory (for want of a better word) class of statutes on the one hand or in the purely fact finding (also for want of a better word) class of statutes on the other hand, the case would be relatively easy of solution. Unfortunately, the statute in question partakes, in language and in practical effect, of some of each class and a detailed, and I might add, painful, review thereof is necessary.

In analyzing the statute, it would appear that the Labor-Management Commission is a fact-finding agency. This is made evident by the language of the preamble of the act and the specific provisions of Section 880.6, supra. In addition, the statute specifically provides that the commission's power "shall be investigatory and fact finding only" (880.6-A), it has no authority to participate in civil judicial proceedings (880.6-B), that it may make no binding adjudication with respect to violations and that its findings may not be used as prima facie or presumptive evidence of guilt or innocence (880.7-A).

On the other hand, the statute is concerned with the taking of testimony and receiving evidence in a public hearing by the commission to determine if a crime has been committed and to determine the parties responsible for having committed said crime. In other words, there is conducted an open hearing where certain persons will be

accused of a crime in public and such persons are without the constitutional safeguards to face their accusers. This is much different from grand jury investigations where the proceedings are conducted in secrecy and an accusation made. Thereafter the accused has his day in court with all "due process" safeguards. Under this system one could only fairly exonerate himself from an accusation thus made by demanding and insisting that he be tried by the appropriate authorities on the charge made by such persons against him. Under the rules of the commission, the accused has no real opportunity to explain away the charges made against him. In other words, by the safeguards the plaintiff seeks, he might well use the forum for subjecting the charges against him to a scrutiny that might disprove them or, at least, establish that they were incompatible with innocent conduct. Nor can there be any doubt but that the commission will pass official judgment on individuals whom they have under scrutiny, particularly in view of the specific language in 880.7-A concerning the publicizing of findings and conclusions as to specific individuals.

Stated differently, there is no doubt that, although denominated a fact-finding and investigatory agency, the commission is charged with making *findings* with respect to actual or probable violations of criminal laws and in fact may either file appropriate charges with the authorities (880.7-B) or request the Governor to ask the Attorney General to cause criminal prosecutions to be initiated (880.7-D). It also appears that an accusatory function is involved, and on the basis of the hearings thus far held, that the commission has become in fact a forum for the litigation of individual culpability and that official incriminatory or defamatory judgments on individuals will be a necessary concomitant of the hearings. This is, of course, aggravated by the fact that the commission's

members and employees are immune from suit (880.16) and that the right of rebuttal testimony and subpoena power is largely discretionary with the commission (880.12).

Counsel for petitioner has called to the Court's attention the case of *State v. Open Hearing Investigation* (1964), 245 La. 1059, 162 So. 2d 565. Although this case is not applicable, in my opinion, because it involved a proceeding in the nature of a judicial proceeding, involving a hearing before a judge, this Court finds itself sharing the fears Chief Justice Fournet expressed in that case, and paraphrasing his language:

> However reprehensible the crimes involved are and how unprecedented the conditions are leading to a shutdown of construction work, and however laudable the efforts of the Legislature and the Governor in their zeal to punish the wrongdoers and eliminate the conditions, it is my opinion that the injury that cannot but result from this unauthorized, unwarranted and dangerous procedure will produce damaging and far-reaching results that will far outweigh the good to be derived from such hearings.

Certainly it is my personal feeling that the procedure here at issue can only lead to "effective trial" by executive agencies and legislative committees to the prejudice of the ultimate trial itself and puts in the hands of the executive branch power historically vested in judges, grand juries, district attorneys and local police officials. Effective use of these historical agencies could go far in eliminating any adverse effect this decision might have.

Weighing all of the facts of this case and balancing the respective interests involved as did Justice Frankfurter, it is the opinion of this Court that the statute in question is more closely allied to the proceedings pro-

scribed by the cases cited in *Hannah* than it is to the statute upheld in *Hannah.*

What we have here is more than an agency whose sole purpose of existence "is to find facts which may subsequently be used as the basis for legislative or executive action" (*Hannah*), more than an inquiry "to pursue a legislative policy of fire prevention through the discovery of the origins of fires [rather than adjudicate individual responsibility for the fire]" (*Re Gorban*, 352 U.S. 330, 1 L. ed. 376, 77 S. Ct. 510), and more than a general inquiry into powers before it "not as potential accused but solely as witnesses" (*Anonymous Nos. 6 & 7 v. Baker*, 360 U.S. 287, 3 L. ed. 2d 1234, 79 S. Ct. 1157). Rather, we have here an agency which makes determinations in the nature of adjudications affecting legal rights (*Morgan v. U. S.*, 304 U.S. 1, 82 L. ed. 1129, 58 S. Ct. 773; *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 95 L. ed. 817, 71 S. Ct. 624; and, *Greene v. McElroy*, 360 U.S. 474, 3 L. ed. 2d 1377, 79 S. Ct. 1400). Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution. (See Justice Frankfurter's concurring opinion, *Hannah*, 4 L. ed. 2d 1307, 1353.)

In view of the foregoing, there is no need to consider whether or not the statute is also unconstitutional as an unlawful delegation of legislative or judicial power to the executive branch of the government.

For the above and foregoing reasons, there will be judgment signed herein making the rule for preliminary injunction absolute, and judgment will be further signed ordering and decreeing that Act Number 2 of the First Extraordinary Session of the Louisiana Legislature for 1967, known and cited as R.S. 23:880.1-880.18 be uncon-

stitutional, null and void, and that defendants, Cecyl Morgan, William Redmann, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, and John Julien McKeithen, Governor of Louisiana, be enjoined and restrained from in any manner enforcing, implementing or carrying out the provisions of said act, and that there be further judgment restraining and prohibiting Andrew P. Tugwell from making any further payments or expenditures of funds appropriated by the Legislature by virtue of the provisions of said act.

Baton Rouge, Louisiana, this 5th day of February, 1968.

/s/ FRED A. BLANCHE, JR.
JUDGE, 19TH JUDICIAL
DISTRICT COURT

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Number 124,349, Docket 2

PATRICK G. MARTONE
vs.
CECYL MORGAN, ET AL

JUDGMENT

This matter having been submitted on the rule for preliminary injunction, the Court considering the law to be in favor of plaintiff, for the reasons assigned in the written opinion dated January 5, 1968:

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment herein making the rule for preliminary injunction absolute, and ordering and decreeing that Act Number 2 of the First Extraordinary Session of

the Louisiana Legislature for 1967, known and cited as R.S. 23:880.1-880.18 be unconstitutional, null and void, and that defendants, Cecyl Morgan, William Redmann, the Labor-Management Commission of Inquiry, its members, officers, agents, representatives and employees, or their successors in office, and John Julien McKeithen, Governor of Louisiana, be enjoined and restrained from in any manner enforcing, implementing or carrying out the provisions of said act, and that there be further judgment restraining and prohibiting Andrew P. Tugwell from making any further payments or expenditures of funds appropriated by the Legislature by virtue of the provisions of said act.

JUDGMENT RENDERED January 5, 1968, in Open Court.

JUDGMENT READ AND SIGNED this 9th day of January, 1968, in Open Court.

Filed Jan 9, 1968
/s/ Rosalyn B. Dobbs
Dy. Clerk of Court

/s/ FRED A. BLANCHE, JR.
JUDGE, 19th Judicial District Court
I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to:
J. Minos Simon and
Ashton L. Stewarts, Esqs.
Done and signed on Jan. 9, 1968
/s/ Rosalyn B. Dobbs

A TRUE COPY
Jan. 9, 1968
/s/ Roberta D. Cox
Dy. Clerk

APPENDIX D

SUPREME COURT
STATE OF LOUISIANA

NUMBER 49,042

PATRICK G. MARTONE

versus

CECIL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER, and JOHN JULIEN McKEITHEN

PLAINTIFF'S APPLICATION FOR REHEARING

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana
ATTORNEY FOR PLAINTIFF-APPELLEE

PATRICK G. MARTONE, appearing through undersigned counsel, respectfully moves the court to grant a rehearing in respect to the opinion of this court rendered on February 19, 1968, and finally to reverse that opinion, because of the existence of the following errors, to-wit:

(1) THE COURT FAILED TO INCLUDE IN ITS DECISION NOT ONLY LEGAL ISSUES PRESENTED BY PLAINTIFF BUT THE VERY CORE ISSUE OF PLAINTIFF'S POSITION; THUS, THE COURT FAILED TO ADJUDICATE THE ESSENTIAL, JUSTICIABLE CONTROVERSY PRESENTED BY PLAINTIFF'S LAWSUIT.

(a) The operative core issue of plaintiff's complaint involved the power of the Commission of Inquiry to make

findings as to the guilt or innocence of specific individuals in relation to the alleged existence of crimes. The opinion of the court, however, stops short of any reference to that offensive power residing in the Commission of Inquiry. For example on P. 2 of the opinion in its recitation of the power conferred upon the Commission of Inquiry, the court declared:

> "This power was limited however, the act declaring, '* * * it shall be investigatory and fact finding only * * *', and it was further provided that 'The Commission shall have no authority to and it shall make no binding adjudication with respect to such violation or violations;' * * *".

A reading of the offensive statute demonstrates however that the phrase immediately succeeding the last truncated quotation of the statute expresses the consummate power conferred upon the Commission which is the source of the constitutional offense against plaintiff's rights. This phrase reads as follows:

> "However, it may, in its discretion, *include in its findings the conclusions of the Commission as to specific individuals* or as to the general situation, or as to both, and it may make such recommendations for action to the Governor as it deems appropriate * * *."

A reading of the opinion would indicate that no such power exists in the Commission of Inquiry. But this power does exist. Moreover such "findings" of guilt *must* be "publicized". This simply means that the finding of guilt of any person accused by the Commission of having committed a crime must be made a matter of public knowledge by its circulation through the news media. Section 880.7(a). To be sure that such an adjudication of guilt is not lost on the public, such a "finding" must be pre-

ceded by a "public hearing". Section 880.7(a). Thus the only difference between a jury verdict in a criminal case and the verdict of the Commission of Inquiry as to guilt or innocence is that such a finding is not automatically followed the imposition of a sentence of imprisonment. The public airing is the same and the deliberation of both bodies comparable. The same defamatory content and the same public condemnation exist in both. After such an adjudication of guilt, the Chairman of the Commission of Inquiry has the authority to file "appropriate charges with the state and federal authorities having jurisdiction". Needless to say any subsequent prosecution of such a publicly condemned person is perfunctory at best and is the basis upon which to provide the sanctions of imprisonment.

§ (b) In the light of the foregoing omission of the court to consider the core issue involved in plaintiff's application, the further failure of the court to consider plaintiff's specific constitutional attacks is of more than passing significance. Unfortunately the court adopted defendants' interpretation of plaintiff's constitutional attack rather than the specific attacks as verbalized by plaintiff himself, through his counsel. To illustrate on P. 2-3 of the opinion the court says:

> "The principal attack levelled by the plaintiff is that the act denies him due process as guaranteed by Section 2 of Article I of the Louisiana Constitution and the Fourteenth Amendment to the Constitution of the United States, because the powers vested in the Commission are such that, in their investigations and hearings authorized under the act, plaintiff and/or persons similarly situated are denied assistance of counsel, the right of confrontation, the right of cross-examination of witnesses and the right to compulsory process for their witnesses. * * *"

Not only is the foregoing statement identical with defendants' interpretation of plaintiff's attack, but it is given in the same order as defendants' have elected to present them to the court in their brief. Say defendants in their brief at P. 2:

> "The main thrust of the attack on said act is that it denies plaintiff 'due process' as guaranteed by Article 1, Section 2 of the Constitution of Louisiana and the Fourteenth Amendment to the Constitution of the United States, because it is claimed that plaintiff is denied by said act the (a) assistance of counsel, (b) right of confrontation, (c) right of cross-examination of witnesses, and (d) compulsory process for his witnesses."

May we point out what plaintiff himself has to say however about his principal attack? We invite the court to plaintiff's brief at P. 3-4:

> "There is no right to the effective assistance of counsel, no right of confrontation, no right to compulsory process for the attendance of witnesses. There are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and no right of appeal. In fact the witness has no right effectively to invoke the immunity of self-crimination. In such a situation the Commission has power to compel one to publicly confess his guilt of criminal law violation by purporting to extend to him immunity from both state and federal prosecution. Section 880.13"

Not only did the court apparently not consider the constitutional effect of investing the Commission of Inquiry to make public findings of guilt of an individual of the commission of a crime, but it has effectively held that no such power rests with the Commission of Inquiry. The court, while acknowledging that the district judge predi-

cated his opinion precisely upon the consideration that such power resided in the Commission of Inquiry, it held that such an opinion in fact did not conform with the "nature of the statute and the purpose of its enactment". To illustrate, on P. 3 of the opinion the court summarized the finding of the district judge, and included in that summary the following quotation of the district judge's opinion:

> "Its duty in large part is to find that named individuals are responsible for criminal actions and to advertise (publicize) such findings and serve as part of the process of criminal prosecution."

Immediately following this quoted excerpt of the district judge's opinion is the following language of this court:

> "This ruling, in our opinion, *does not conform* with the nature of the statute and the purpose for its enactment, for the Labor-Management Commission of Inquiry is not invested with any power to make adjudications affecting legal rights. On the contrary it is, as its provisions expressly set forth, an administrative commission (R.S. 23:880.1) created for the special purpose of investigating and finding facts in relation to violation of existing criminal laws * * * 'affecting in a significant manner labor-management relations in one or more areas of the state * * *' ".

Thus there is a double disclaimer as to the reality of the actual power of the Commission of Inquiry. Twice in this ruling this Court denies that the Commission of Inquiry has the power to make public findings of the guilt of a person as to the commission of a crime, despite the fact that the statute itself expressly so provides. Moreover, not once throughout the entire opinion does the court give any consideration to plaintiff's constitutional attack that "there are no effective and meaningful rules of evidence, no meaningful and definable standards of guilt or innocence and

no right of appeal", and "no right effectively to invoke the immunity of self-crimination".

Furthermore, the fact that the court is content to hold that the due process clause of Article 1, Section 9 of the Constitution of Louisiana applies only in criminal prosecution, is no answer to plaintiff's claim that his right to due process under the Fourteenth Amendment is violated by the state statute in question. If there is a dual standard of due process in Louisiana, one oriented to the Louisiana Constitution and the other to the Fourteenth Amendment to the United States Constitution, the restricted expanse of the Louisiana concept cannot operate to contract the broader and more humane compass of the Fourteenth Amendment to the United States Constitution. It was therefore reversible error for the court to have not adjudicated all of the constitutional issues presented by plaintiff.

(2) THE COURT COMMITTED ERROR IN HOLDING THAT THE COMMISSION OF INQUIRY DID NOT HAVE POWER TO INSTITUTE FORMAL CRIMINAL ACCUSATIONS.

§ (a) At P. 6 of the opinion the court held:

"Reverting again to the claim that the powers vested in the Commission violate the due process provision of Section 2, of Article 1 of our Constitution, we believe that the functions of the Commission, i.e., investigatory and fact finding, are somewhat akin to that of the Grand Jury *lacking, however, the effectiveness of formal accusation*, for the Commission reports merely inform the Legislature, the Governor and other executive offices that a crime has probably been committed. Without action on the part of those officers charged with the duty of prosecuting crime, the Commission's findings amount to naught. It is merely advisory and does not affect constitutional rights."

Respectfully plaintiff points out that this statement by the court is diametrically contrary to the express provision of the statute under consideration. The Commission of Inquiry does not lack the effectiveness of formal accusation. As pointed out in plaintiff's brief at P. 3 thereof, Section 880.7(b) expressly provides as follows:

> "In addition, when directed to do so by the Commission, the *Chairman* shall file appropriate charges with the state and federal authorities having jurisdiction."

Indeed the Commission of Inquiry is comparable to a Grand Jury. The bill of indictment is simply drawn up by the Chairman instead of the District Attorney. This legislative body, functioning as an executive trial agency, does not have to wait upon the pleasure of prosecuting attorneys to institute criminal prosecutions against persons found guilty of criminal law violations. Members of the Commission of Inquiry, functioning through the Chairman, have that unquestioned power. As appropriately observed by the district judge such findings serve as part of the process of criminal prosecution. Thus the statement of court appearing on P. 6-7 of the opinion hereinafter quoted is erroneous, to-wit:

> "However, we know of no basic objection from a constitutional standpoint to an open investigation by an administrative body from whose factual findings accusations of commission of crime may subsequently be charged by the *properly constituted authorities.*"

As pointed out herein, this alleged administrative body does not have to wait on "properly constituted authorities" to file charges against individuals appearing before it or even those not appearing before it. It has the inherent statutory power to do just that itself. In this context

the rationale of the decision in OPEN HEARING INVESTIGATION, 245 La. 1059, 162 So.2d 565, is imminently and inescapably applicable, the disclaimer of the court to the contrary notwithstanding. The criterion established by OPEN HEARING INVESTIGATION was verbalized in these words by this court: (162 So. 2d at P. 567).

> "* * * *If testimony or evidence is adduced* at said hearings *showing the commission by named person of the crime or offense being investigated*, then such persons shall have the right to be heard, may appear with counsel, and shall have the right to testify under oath, recall witnesses for cross-examination and have compulsory process for obtaining witnesses in his favor."

Thus, the triggering mechanism legally sufficient to inveigle the intervention of the court in Louisiana to protect an individual against invasion of his constitutional rights in an open hearing where the object is the determination of the existence of crimes and the identity of persons responsible therefor, depends upon two crucial events or occurrences: (a) that testimony or evidence is adduced at said hearing, and (b) shows the commission by a named person of the crime or offense being investigated. According to OPEN HEARING INVESTIGATION, a decision by the highest court of the State of Louisiana, when these two conditions concur, "then such persons shall have (a) the right to be heard, (b) may appear with counsel, (c) and shall have the right to testify under oath, (d) recall witnesses for cross-examination, and (e) have compulsory process for obtaining witnesses in his favor." Thus in 1964 this was the operative standard of constitutional liberty in Louisiana.

The Commission of Inquiry functions in the exact manner as was the function in OPEN HEARING INVES-

TIGATION. In fact the sole function of the Commission of Inquiry is the same as the sole function of the Open Hearing Investigation. Both bodies sought to develop evidence in a public hearing that would show the commission of crimes and would identify the person who has committed it. Thus the public hearing of both these bodies are indistinguishable in fact and law. This court held that the constitutional strictures enunciated in OPEN HEARING INVESTIGATION applied in that particular case "since it was a judicial proceeding", but did not apply to the instant case for two "cogent reasons". The reasons given by the court are as follows: (P. 7-8 of the opinion)

> "First, the hearings provided for are before an administrative commission created by the Legislature, and the commission's function to investigate and report to various executive and prosecuting officers, and also the Legislature, is purely administrative in nature. Secondly, since the act itself provides the procedural rules to be followed, this court is without authority to strike down those procedures in the absence of a finding that they are unconstitutional."

It is respectfully submitted that these reasons are indeed not cogent at all. The court is looking to the form of the law rather than the substance. As plaintiff pointed out in his brief, P. 8, "a denial of constitutional rights occurring under the auspices of an executive trial agency, where there is no right of appeal, is no less certain or harmful than a denial of such rights occurring under the auspices of a judicial forum, where there is no right of appeal, as was the case in OPEN HEARING INVESTIGATION. In other words, the personality of the executioner does not make the blow which he inflicts less fatal, nor the death of his victim less certain." As plaintiff further remonstrated with the court: "the fact that in the one case such a hearing is conducted before a judge and in the other before

nine Commission members is of no significance in terms of the rights of the individual involved. In other words a procrustean bed is a procrustean bed. The fact that the chopping knife is wielded by a district attorney elected by the people or by nine men appointed by the Governor does not make the legal limbs of the victim less likely to be chopped off. It is the chopping which offends and not the forum before which the legal slaughter occurs nor the classification of the dignitary who presides over the operation". Therefore if the procedures provided for by the Commission of Inquiry do not conform to the constitutional standards enunciated and defined by this court in OPEN HEARING INVESTIGATION, where the object of the hearing is identical, then of necessity this court not only has the authority, but the duty to strike down such inadequate procedures as unconstitutional.

(3) THE COURT ERRED IN HOLDING THAT THE PURPOSE OF THE LEGISLATION WAS TO ENABLE THE LEGISLATURE TO ENACT NEW LAWS.

(a) The court held that the statute in question merely established an "administrative body" which, "merely finds facts and recommends", (P. 4) and that it is "merely an adjunct of the executive and legislative departments reporting, as it does, its findings of facts which may serve these departments with data from which new laws may be enacted * * *". (P. 5) Such activities on the part of the Commission of Inquiry are expressly proscribed by the very provisions of the statute under consideration. Section 880.6(b) provides:

> "The Commission shall have *no power*, authority or jurisdiction to investigate, hold hearings, or seek to ascertain the facts or make any reports or recommendations on any of the strictly civil aspects of labor problems or disputes * * *."

This executive trial agency therefore is not a benign, fact finding agency of either the executive or legislative departments of government. It is precisely what it purports to be, namely, an executive trial agency without authority to make recommendations as to the enactment of new laws.

(4) THE COURT ERRED IN HOLDING THAT THE TEMPORARY ASSIGNMENT OF INVESTIGATORS OF THE COMMISSION OF INQUIRY TO THE STATE POLICE IS NOT CONTRARY TO THE PROVISIONS OF ARTICLE 14, SECTION 15 OF THE LOUISIANA CONSTITUTION. SUCH HOLDING AMOUNTS TO JUDICIAL LEGISLATURE.

(a) The court dismisses this contention in one sentence reading in its entirety as follows: (Opinion P. 10)

> "The investigators of the Commission do not become members of the State Police, when temporarily assigned upon the request of the Governor, but are only given the power and authority of members of the State Police while acting under the assignment."

To appreciate the significance of the error of such a ruling, this pithy ruling must be considered contextually with the actual provisions of the statute under consideration, namely, Section 880.6(c):

> "Upon the request of the Governor, the Commission may assign all or part of its investigatory forces to the State Police to assist them in investigating *any* violations or probable violations of law and in *apprehending all persons engaged in violation of law.* During *such assignment* such investigators *shall* be under the supervision of the Director of the Department of Public Safety and have *all the power* and authority of other members of the State Police."

It is difficult to understand how it can be concluded that such investigators do not become part or members of the State Police during that assignment, when their function is identical as any other members of the State Police and when their superior as to their function is the same as other members of the State Police. Certainly they are members in fact of the State Police. It is the de facto membership that offends against the constitutional proscription of Article 14, Section 15. This constitutional proscription does not authorize the Governor or any executive agency to institute any person as a member of the State Police permanently or temporarily. A temporary violation of the constitution is as much of a violation of it as a permanent violation is. The effect of the decision of this court is that the Constitution of the State of Louisiana may be temporarily violated by the Governor or an executive agency with utter immunity. This is indeed introducing a dangerous doctrine. The people of Louisiana are the ones who determine what their Constitution shall contain. Nowhere can it be found in the provisions of Article 14, Section 15, that the people of Louisiana have agreed that Governor McKeithen or his Commission of Inquiry enjoy the prerogative of violating their Constitution "temporarily". The danger of such a doctrine lies in the definition of the word "temporary". The court may take judicial notice of the fact that some investigators of the Commission of Inquiry have been functioning as members of the State Police for approximately eight months now. This court may take judicial notice of the fact that in that capacity they have conducted gambling raids throughout the State of Louisiana and also have arrested a few prostitutes. The court may take judicial notice of the further fact that they have investigated Sheriff Jessel Ourso of Iberville Parish, Louisiana in connection with the fulfillment of Governor McKeithen's desire to bring to naught the

will of the electorate of Iberville Parish, Louisiana by ousting Sheriff Ourso from office. If the court is to accept at face value the public statements of Governor McKeithen, then it is fair to say that the "temporary" assignment of the investigators of the Commission of Inquiry to the State Police will endure for as long as McKeithen remains Governor of the State of Louisiana. This could be forever. It is submitted therefore that it is no answer to the unarguable proposition that the assignment of investigators of the Commission of Inquiry to the Louisiana State Police and the installation of them as members thereof violate the proscription of Article 14, Section 15, to say that such a violation is tolerable because it is only temporary in nature.

(5) IT WAS ERROR OF THE COURT TO DISMISS PLAINTIFF'S LAWSUIT, WHEN THE ONLY MATTER BEFORE THE COURT WAS THE ISSUE OF A PRELIMINARY INJUNCTION.

(a) This case is before the court in connection with the granting of a preliminary injunction. Thus there is before the court only an interlocutory judgment. Despite this the court dismissed plaintiff's lawsuit as though the merits were before it. There is no sanction of law for such an adjudication and therefore it was error for the court to dismiss plaintiff's lawsuit.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana
ATTORNEY FOR PLAINTIFF-
APPELLEE

/s/ J. MINOS SIMON
ATTORNEY FOR PLAINTIFF-
APPELLEE

CERTIFICATE

I hereby certify that a copy of the foregoing application for rehearing has been supplied to attorneys for defendants:

Mr. Ashton L. Stewart, Special Assistant
Attorney General, State of Louisiana
604 Union Federal Building
Baton Rouge, Louisiana 70801

And

Mr. Wesley Wirtz, Assistant Attorney General,
State of Louisiana
604 W. Roosevelt Street
Baton Rouge, Louisiana

Lafayette, Louisiana, this 1st day of March, 1968.

/s/ J. MINOS SIMON
J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 1st day of March, 1968, at Lafayette, Louisiana.

/s/ RONALD E. DAUTERIVE
Notary Public

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No. 216

In the Supreme Court of the United States

OCTOBER TERM, 1968

PATRICK G. MARTONE,

Appellant,

v.

CECIL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER, AND JOHN JULIAN MCKEITHEN,

Appellees.

On Appeal from the Supreme Court of the State of Louisiana

MOTION TO AFFIRM

ASHTON L. STEWART,
Special Assistant Attorney General of the State of Louisiana,
604 Union Federal Building,
Baton Rouge, Louisiana.
WESLEY WIRTZ,
Assistant Attorney General of the State of Louisiana,
Capitol Building,
Baton Rouge, Louisiana.
Attorneys for Appellees

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MOTION TO AFFIRM

Appellees Cecil Morgan (now Jay Taylor), et al, respectfully move the Court, pursuant to Rule 16(1)(d) of the Rules of the Court, to affirm the judgment below and in support thereof would show that plenary consideration of this appeal is unnecessary because the decision below is clearly correct.

CITATION TO OPINION BELOW

The judgment below and the opinion supporting it of February 19, 1968, and rehearing denial of March 25, 1968, is reported at 251 La. 993, 207 So. 2d 770.

JURISDICTION

Jurisdiction of this appeal is founded upon 28 U.S.C. 1257(2), in that injunctive relief was sought by plaintiff against the enforcement of a statute of the State of Louisiana on the ground that it violates the Constitution of the United States and was denied by the Supreme Court of Louisiana.

QUESTION PRESENTED

Do procedural rules of a commission, whose function is purely investigative and is without authority to adjudicate, violate due process in denying witnesses before it the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses?

STATEMENT OF THE CASE

This action was commenced on December 15, 1967, challenging the constitutionality of Act 2 of the Extraordinary Session of the Legislature of Louisiana of 1967 (R.S. 23:880.1-880.18) which created a commission denominated as the "Labor-Management Commission of Inquiry" to investigate and find facts relating to violations or possible violations of the criminal laws of the State of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations.

The plaintiff alleged that the Commission of Inquiry had scheduled hearings in which plaintiff's conduct was to be inquired into. Plaintiff claimed the statute violated the due process of the Fourteenth Amendment in that the plaintiff, in said investigation,

would be denied by the statute the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses.

The Supreme Court of Louisiana found that this Commission could only investigate and report and could not adjudicate, and then held that *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, was decisive on the issue raised by plaintiff and stated that the Louisiana Legislature had drafted the rules of procedure for the Commission "in strict accordance with the views expressed by the majority opinion" in that case, and, accordingly, dismissed the plaintiff's suit.

Notice of Appeal was filed in the Supreme Court of Louisiana on June 10, 1968, and plaintiff's statement as to Jurisdiction was filed June 20, 1968.

ARGUMENT

Statute Creating Commission to Investigate Possible Violations of Criminal Laws, Which Commission Was Merely a Fact-Finding Body and Could Not Adjudicate, Was Not in Violation of the Due Process Clause of Fourteenth Amendment in Denying Confrontation, Assistance of Counsel and Compulsory Process for Obtaining Witnesses.

According to the preamble of the Act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State of Louisiana in the field of labor-management relations under which, by reason of sus-

pected violations of the State and Federal criminal laws, there had been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons, that the then present conditions vitally affected the public interest and threatened to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the then presently existing conditions, the public interest required that the causes thereof be investigated on a statewide basis as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States. The Commission was required to report to the Louisiana Legislature, the Governor, the Lieutenant-Governor and the Attorney General.

The statute granted limited power to the Commission, declaring ". . . it shall be investigatory and fact finding only . . .", and the statute provided that "The commission shall have no authority to and it shall make no binding adjudication . . . ."

Inasmuch as the power of this commission was limited by the statute to investigating and reporting and the statute did not authorize the commission to adjudicate on matters affecting the life, liberty or property of the person under investigation, just as the statute which created the Civil Rights Commission before the Court in *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, and inasmuch as the rules of procedure for the investigations to be conducted by this commission were identical to those of

the Civil Rights Commission, the issues in this case are identical with those in Hannah, where the statute was held constitutional, we submit that the questions on which this cause depends are so unsubstantial as not to need further argument.

The Supreme Court of Louisiana, in deciding the question presented by this appeal, in following *Hannah v. Larche*, said:

> "This Court not only shares the majority view (of *Hannah v. Larche*) but, were it otherwise, we would perforce be bound to follow it."

CONCLUSION

For the foregoing reasons, the judgment appealed should be affirmed.

Respectfully submitted,

ASHTON L. STEWART,
Special Assistant Attorney
General of the State of
Louisiana,
604 Union Federal Building,
Baton Rouge, Louisiana.

WESLEY WIRTZ,
Assistant Attorney General
of the State of Louisiana,
Capitol Building,
Baton Rouge, Louisiana.

Attorneys for Appellees

PROOF OF SERVICE

I, Ashton L. Stewart, Special Assistant Attorney General of the State of Louisiana, attorney for appellees herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the 10 day of July, 1968, I served a copy of the foregoing motion to affirm on the appellant herein, by mailing said copy in a duly addressed envelope with first class postage prepaid to his attorney of record, J. Minos Simon, Esquire, 1408 Pinhook Road, Post Office Box 52116, OCS, Lafayette Louisiana 70501.

Baton Rouge, Louisiana, this 10 day of July, 1968.

ASHTON L. STEWART
Special Assistant Attorney
General of the State of
Louisiana,
604 Union Federal Building,
Baton Rouge, Louisiana 70801.

Attorney for Appellees.

B-1449, 7-68

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IN THE

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OCTOBER TERM, 1968

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Appeal from the Supreme Court of the State of Louisiana

APPLICATION FOR REHEARING

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Appellant

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Appellees.

Appeal from the Supreme Court of the State of Louisiana

APPLICATION FOR REHEARING

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

PATRICK G. MARTONE, plaintiff in the captioned matter, respectfully petitions the court to grant a rehearing as to the Per Curiam decision of the court of October 14, 1968, whereby petitioner's appeal from the

decision of the Louisiana Supreme Court was dismissed for want of a substantial federal question, Mr. Justice Black dissenting.

Respectfully petitioner asserts that the Per Curiam decision should be recalled, jurisdiction should be noted and a full hearing before the court should be granted for the reason, that not only does the appeal present substantial federal questions as to the constitutionality of the state statute in controversy, but events occurring since the inception of this lawsuit in relation to the administration of said state statute give rise to profound questions of constitutional law and make imperative judicial relief, if the constitutional liberties of petitioner and those similarly situated are to survive. These events exemplify:

(a) A willful, concerted, and unbelievably abrasive course of conduct by state officials, spearheaded by the Governor of the State of Louisiana, directed against petitioner and every member of Teamsters Local Union No. 5 of Baton Rouge, Louisiana, designed to destroy said labor union and imprison every member without reasonable regard to guilt or innocence.

(b) An intimidation of state officials, including state judges, charged with carrying out the criminal prosecutions of petitioner and members of said labor union, with the result that said union members charged with criminal law violation daily are being denied the rudiments of constitutional due process, including instances of (1) collusion between state judge and prosecution attorney, (2) denial of compulsory process, (3) denial of any hearing on preliminary matters and on the merits, (4) denial of the right to make up formal bills of excep-

tions necessary for an effective appeal as to trial court rulings, and (5) denial of the right to prepare a defense by the action of state officials intimidating and instructing witnesses into silence vis-a-vis efforts of the counsel for the accuseds to interview said witnesses in preparation for trial.

On January 17, 1968, an unfortunate event occurred. Violence erupted in Iberville Parish, Louisiana, during peaceful picketing activities on a job site. Despite the fact that local officials investigating the incident obtained statements from non-striking labor members to the effect that the non-strikers had opened and initiated gun fire against the striking union members engaged in peaceful picketing, the Governor of the State of Louisiana, defendant in this cause, used the occasion of this unfortunate event to unleash the entire power of the State of Louisiana against members of Teamsters Local Union No. 5, who theretofore had been the prime target of the investigating activities of the Labor-Management Commission of Inquiry, the agency created by the state law whose constitutionality is challenged by petitioner herein.

Contrary to the purport of the statements collected by local officials as herein aforesaid, on January 19, 1968, at a press conference Governor McKeithen blamed members of Teamsters Local Union No. 5 for the violence. He then publicly characterized these union members as "hoodlums" and "gangsters". He directed all of the investigative agents of the Labor-Management Commission of Inquiry to the task of bringing about the prosecution of these union members. Contrary to state law, *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1, he directed the Attorney General of the State of Louisiana to take

over the prosecution of these union members. He also directed the Superintendent of State Police to aid in this prosecutive pursuit. He threatened to address out of office any local official whom he did not feel was carrying out his duty in the prosecution of these union members.

In short order multiple charges arising out of the single transaction mentioned were filed exclusively against members of the labor union, leaving the non-union aggressors free and clean, and excessive bail bond was required. (See Appendix A-1)

Illustrative of the abrasive state actions resulting in the denial of the constitutional rights of the victimized union members are the following examples:

EXAMPLE I

On February 15, 1968, four bills of information charging the crime of criminal conspiracy to commit a battery with a dangerous weapon were filed against one Roderick Jenkins (Plaintiff-Appellant before this court in docket number 548), despite the fact that he was in no way involved in such a criminal transaction nor was he anywhere near the scene of the alleged crime. After his arrest he applied for a preliminary examination or in the alternative for a speedy trial. (See Appendix B-1) When the state trial judge refused to take any action on his application, a petition for mandamus was filed with the Louisiana Supreme Court. (See Appendix B-2) This application was summarily denied. (See Appendix B-3) After denial of his petition the state judge denied his application for a preliminary examination and a speedy trial, stating as to the latter that Jenkins' trial was due

to be conducted during the month of April, 1968. (See Appendix B-4)

State officials failed and refused to try Mr. Jenkins' case as indicated by the state judge in his denial of Mr. Jenkins' application for a speedy trial. Mr. Jenkins' case was set for trial for October 7, 1968. On September 30, 1968, however, the Attorney General moved to set aside Jenkins' trial, assigning no cause whatever. Mr. Jenkins vigorously opposed the motion but the Attorney General prevailed, the state judge granted the motion and the trial of Mr. Jenkins' case was set aside without date. He continues to be unable to obtain a speedy trial and has thus far been unsuccessful in obtaining judicial relief from the state court to compel state officials to recognize and accord to him his constitutional right to a speedy trial.

EXAMPLE II

Despite the mandatory provision of state law, Louisiana Code of Criminal Procedure, Article 321, a bail bond may be increased only for good cause. On September 3, 1968, on a showing of no cause whatever State Judge Daniel Kimball more than doubled and tripled existing bonds as to thirteen union members accused of crime. (See Appendix C-1)

Thereafter one of the defendants, Jerry Sylvester, filed a formal application to reinstate the original bail or in the alternative to reduce the increased bail . (See Appendix C-2) This motion was fixed for hearing for September 23, 1968. A written request dated September 19, 1968, for the issuance of subpoenas for the appearance of witnesses on behalf of Mr. Sylvester was hand-delivered to the Clerk of the state court. State Judge Kimball,

however, extrajudicially, and without Mr. Sylvester's knowledge, instructed the state Clerk of Court not to issue the subpoenas for the appearance of Mr. Sylvester's witnesses to testify on his behalf in connection with his motion to reduce the bail bond. Said state judge admitted that compulsory process was denied because of his instruction and also refused to conduct any hearing as to Mr. Sylvester's application.

EXAMPLE III

Seventeen separate charges of public bribery were filed against Stanley H. Jackson. In connection with preliminary hearings State Judge Kimball overruled Mr. Jackson's objection to the participation of the Attorney General of Louisiana as prosecuting attorney in violation of state law. *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1. This objection was overruled. Mr. Jackson thereupon requested leave of court to establish the factual basis of his bill of exception reserved to the ruling of the court pursuant to state law (Louisiana Code of Criminal Procedure, Articles 843 and 844). Said state judge refused Mr. Jackson's request. Because of the peculiar provision of state law appellate courts will consider only formal bills of exceptions reserved during proceedings in the lower court, and these bills must contain the facts upon which the objection is based; otherwise, these objections will not be considered and reviewed on appeal. Thus the ruling of the state judge effectively denied Mr. Jackson of any review on appeal. An application to the Louisiana Supreme Court for certiorari and mandamus was filed. (See Appendix D-1) Despite the fact that the conduct of said state judge shut off any right of appellate review as to the rulings complained of, Mr. Jackson's

application was denied by the Louisiana Supreme Court. (Appendix D-2)

Furthermore, despite the provisions of state law granting to all persons accused of crime the right to have bills of exceptions and the facts upon which objections are based transcribed at the expense of the state, Mr. Jackson was denied of this right as shown by the content of his application aforesaid.

State Judge Kimball continued to deny Mr. Jackson of the rudiments of perfecting formal bills of exceptions and of eliciting and establishing the facts upon which his objections were predicated. Subsequent application for remedial writs from the Louisiana Supreme Court, the court of last resort, similarly was denied. (Appendix D-3)

EXAMPLE IV

Acting in collusion with the Louisiana Attorney General and his assistants, State Judge Kimball on September 30, 1968, ordered a change of venue of the criminal prosecutions against Mr. Jackson without any hearing contrary to state law. All efforts at obtaining a hearing in respect to the charge of collusion just mentioned, and to the continuing refusal of state officials to supply Mr. Jackson with a transcript of the facts upon which his bills of exceptions and objections rest have been denied. The consequence of this course of conduct is to remit Mr. Jackson to a trial before a judicial forum not legally competent to conduct the hearing and to the corollary financial burden of sustaining such a trial and to the burden of the agonizing ignominy of a public trial. Application to the Louisiana Supreme Court for remedial writs as to Mr. Jackson's inability to obtain a hearing

concerning his complaints was summarily denied. (See Appendix D-4)

EXAMPLE V

Members of the Attorney General's Office have instructed witnesses purportedly having material information concerning the criminal prosecution of Mr. Jackson not to speak to Mr. Jackson's counsel in connection with Mr. Jackson's effort to prepare his defense to the seventeen charges of public bribery. In so doing they are engaging in pretrial suppression of evidence and consequently denying Mr. Jackson of the opportunity to fully and fairly defend himself to the criminal charges filed against him. They have also attempted to obtain evidence against Mr. Jackson by threatening with criminal prosecution persons whom they believe may possess information incriminatory of Mr. Jackson. Furthermore, resort to federal court to secure and vindicate his constitutional rights has been without avail. A detailed recital of these transactions is contained in the document annexed hereto under Appendix E-1.

EXAMPLE VI

The matter of *Jenkins v. John Julien McKeithen, et al.,* lodged in this court under docket number 548, defendant McKeithen, Governor of Louisiana, is charged with a conspiracy to deny Mr. Jenkins and members of Teamsters Local Union No. 5 of their civil rights secured by the Constitution of the United States, arising out of the course of conduct by state officials as heretofore enumerated and otherwise. On January 26, 1968, in a public statement as to the conspiracy charge involving defendant McKeithen and members of the Labor-Management

Commission of Inquiry of Louisiana, McKeithen threatened:

> "Any testimony under oath that there is any connection on my part, on Dean Hebert's part or Dean Morgan's part, of any conspiracy with anyone, other than those who are guilty of bombing, aggravated battery, extortion and so forth, they immediately will be charged with perjury and we shall have some more go to the penitentiary."

On May 2, 1968, one George Wyatt, a former undercover agent of the Louisiana Commission of Inquiry, executed an affidavit to be filed and used in support of an application for injunctive relief in the case of *Jenkins v. John Julien McKeithen, et al.*, while it was pending before the United States District Court, Eastern District of Louisiana, Baton Rouge Division, which affidavit supports the charge of conspiracy alleged in said lawsuit, including the statement that investigators of this state agency were given the right to kill certain members of said labor union so long as it was made to appear to be an act of self-defense. (Copy of affidavit appears as Appendix F-1)

On July 30, 1968, in fulfillment of McKeithen's threat to prosecute for perjury any witness who might give any statement under oath in support of the conspiracy charged, one Joseph A. Oster, an investigator for the Labor-Management Commission of Inquiry of Louisiana, filed an affidavit before Fred S. LeBlanc, Judge of the Nineteenth Judicial District Court of Louisiana, charging the said George Wyatt with the crime of perjury for having filed his aforesaid affidavit before the United States District Court; based upon such affidavit a warrant for his arrest was issued, bringing about his

arrest, and he was released on posting a Fifteen Thousand ($15,000.00) Dollar bail bond. (Copy of affidavit appears as Appendix F-2)

On October 9, 1968, a formal bill of information was filed against the said George Wyatt by Mr. Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana, charging said Wyatt with perjury in violation of Louisiana Revised Statute, Title 14, Section 123, based upon the sworn statement which Wyatt gave in support of the conspiracy charge against Governor McKeithen. (Copy of Bill of Information appears as Appendix F-3)

Said criminal charge of perjury was filed by state officials, functioning as agents for the Labor-Management Commission of Inquiry of Louisiana, solely for the purpose of depriving Mr. Jenkins of his constitutional right to produce proof in support of his legitimate claim and to obstruct the due course of justice. This purpose is made manifest by the unambiguous decision of this court in *Thomas v. Loney*, 134 U.S. 372, 10 S.Ct. 584, which makes it clear that deponent Wyatt is accountable exclusively to the United States government, and if indeed his sworn statement is false, it does not constitute a crime cognizable by the laws of the State of Louisiana.

The state statute in controversy creates not an innocuous investigative agency of the State of Louisiana. As the state trial judge who considered the state statute unconstitutional observed in his opinion:

> "What we have here is more than an agency whose sole purpose of existence 'is to find facts which may subsequently be used as the basis for legislative or executive action' *(Hannah)*, more than an inquiry 'to pursue a legislative policy of fire

prevention through the discovery of the origins of fire [rather than adjudicate individual responsibility for the fire]' (*Re Gorban,* 352 U.S. 330, 1 L.Ed. 376, 77 S.Ct. 510), and more than a general inquiry into powers before it 'not as potential accused but solely as witnesses' (*Anonymous Nos. 6 & 7 v. Baker,* 360 U.S. 287, 3 L.Ed 2d 1234, 79 S.Ct. 1157). Rather, we have here an agency which makes determinations in the nature of adjudications affecting legal rights (*Morgan v. U.S.,* 304 U.S. 1, 82 L.Ed. 1129, 58 S.Ct. 773; *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U.S. 123, 95 L.Ed. 817, 71 S.Ct. 624; and *Greene v. McElroy,* 360 U.S. 474, 3 L.Ed.2d 1377, 79 S.Ct. 1400). Its duty in large part is to find that named individuals are responsible for criminal actions and to *advertise* (publicize) such findings and serve as part of the process of criminal prosecution. (See Justice Frankfurter's concurring opinion, *Hannah,* 4 L.Ed.2d 1307, 1353.)"

Furthermore, as exemplied by this application and the annexed documents, state officials are willfully administering the provisions of said act in furtherance of a discriminatory pattern of criminal prosecution designed to throttle and destroy the rights and opportunities of a group of union laborers singled out for special treatment. These wrongful acts performed by these state officials, charged with the responsibility of enforcing the state statute in controversy, are but an extension of the wrongful state actions alleged in Paragraphs 17-19 of petitioner's supplemental petition before this court. (See Appendix B-46-47 of his Statement as to Jurisdiction)

These wrongful acts illustrate what is made possible by the state statute in controversy, and conclusively establish that the fact-finding procedure of said state law

is but a part of a criminal process leading to purposeful convictions.

While ordinarily a person convicted of crime has a remedy by appeal, this is not always the case in Louisiana. In most cases appeal remedies are nominal only in that where one is sentenced to imprisonment for five (5) years or more, he is not able to be released on bail during his appeal. Louisiana Code of Criminal Procedure, Article 314. Thus, however innocent, where an erroneous conviction obtains, the accused must serve time in prison, pending an appeal to effect a reversal.

Considered in the light of these developments, which exemplify a discriminatory pattern of criminal prosecution against a group singled out for special treatment and which disclose that hearings before the state agency created by the statute in controversy serve as part of the process of criminal prosecution, it is evident that this state law is unconstitutional, both by virtue of the terms it employs and by virtue of the manner in which these terms are being administered against petitioner and the other union members.

For these reasons petitioner respectfully urges the court to recall its Per Curiam decision, to note jurisdiction and to grant to petitioner a full hearing on his

appeal to the end of adjudicating the substantial federal questions presented.

Respectfully submitted,

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Appellant

APPENDIX A-1

The following is a list of the individuals who were charged and the aggregate of the bail bond exacted from each.

Name	*Bail Bond*
Jerry Sylvester	$10,000.00
Terry George	$10,000.00
Jerry Kinchen	$10,000.00
Edgar Coleman	$10,000.00
Tommy Craig	$10,000.00
Alton Holden	$ 8,000.00
Hugh Marionneaux	$ 8,000.00
Emery C. Hendrick	$ 8,000.00
Lloyd W. Kinchen	$ 8,000.00
Emmett Tucker	$ 8,000.00
Gene C. Fontenot	$ 8,000.00
Billy Dardeau	$ 8,000.00
Byron D. Vidrine	$ 8,000.00
Roderick Jenkins	$ 8,000.00
Daniel Coriel	$ 8,000.00

APPENDIX B-1

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBERS 9840, 9841, 9842, 9843

IBERVILLE PARISH, LOUISIANA

STATE OF LOUISIANA

VERSUS

RODERICK JENKINS

PETITION FOR A PRELIMINARY EXAMINATION OR ALTERNATIVELY FOR A SPEEDY HEARING

The petition of Roderick Jenkins, resident of East Baton Rouge Parish, Louisiana, respectfully represents that:

1.

On February 15, 1968, Honorable Sam Cashio, District Attorney, filed a Bill of Information against your petitioner, assigned as Docket Number 9840, whereby your petitioner is charged with a criminal conspiracy to commit a battery with a dangerous weapon on W. O. Bergeron; a Bill of Information, assigned as Docket Number 9841, whereby your petitioner is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Warren Shores; a Bill of Information, assigned as Docket Number 9842, whereby your petitioner is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Alfred Bergeron; a Bill of Information, assigned as Docket Number 9843, whereby your petitioner is charged with

a criminal conspiracy to commit a battery with a dangerous weapon on one Cornelius Green; said criminal offense is alleged to have been committed in Iberville Parish, Louisiana, on January 17, 1968.

2.

Your petitioner alleges that said criminal charges are scandalously and willfully false and without factual support whatsoever; petitioner further alleges that according to his information the filing of said criminal charges against him is but the product of a conspiracy among state officials, including John Julien McKeithen, Governor of the State of Louisiana, willfully and deliberately to falsely prosecute your petitioner with a view to denying and depriving your petitioner of his constitutional liberties as a means of discrediting the Teamsters Labor Union organization of Baton Rouge, Louisiana, of which your petitioner is a member, and ultimately for the purpose of discrediting and destroying the effectiveness of one Edward Grady Partin, Business Agent of said Teamsters Local Union No. 5 of Baton Rouge, Louisiana, and with a further view of generating a public climate that will encourage the enactment of punitive legislation against labor unions of Louisiana at the next regular session of the Legislature of the State of Louisiana to be convened during May, 1968.

3.

Petitioner further alleges that at no time material to the criminal activities mentioned in the Bills of Informaton was your petitioner anywhere in the Parish of Iberville, State of Louisiana; on the contrary your petitioner was engaged in the discharge of the duties of his

employment with Kaiser Engineers, a division of Henry J. Kaiser Company, with plant facilities in Baton Rouge, Louisiana; petitioner alleges that on the morning of January 17, 1968, he reported to the site of his employment at Baton Rouge, Louisiana, aforesaid, at 7:00 o'clock A.M. and there remained continuously until the termination of his employment for that day at or about 4:00 o'clock P.M.; petitioner alleges that he functioned as a warehouseman in a warehouse building located on a construction site of the Henry J. Kaiser Company property located on the Mississippi River in the City of Baton Rouge, Louisiana.

4.

Your petitioner alleges that he had nothing whatsoever to do with the alleged criminal offenses charged in the said Bills of Information; except to post his bail bond, your petitioner alleges that he has never been in Iberville Parish, Louisiana, for the year 1968 and to his recollection he has not been in Iberville Parish for the past three to four years and then his appearance therein at that time was of a transitory nature only.

5.

Petitioner alleges that the false charges aforesaid have exposed your petitioner to ridicule and public hatred; John Julien McKeithen, Governor of Louisiana, has made repeated public statements identifying those charged with criminal offenses in Iberville Parish, Louisiana, as hoodlums and gangsters comparable in character to the Mafia and notorious underworld figures; your petitioner is entitled to and desires to have an expeditious disposition made of the false charges filed against him and because of the exigencies in this particular case,

and because of the total lack of factual basis for the criminal charges filed against him, your petitioner should be granted and is entitled to a preliminary examination with a view to being discharged immediately and set free and having said criminal charges dismissed; alternatively your petitioner is entitled to a speedy hearing, and trial of said causes should be set down for hearing in the immediate future.

WHEREFORE PETITIONER PRAYS that a preliminary examination be ordered conducted on a date designated by this Honorable Court and after due hearing had pursuant to law, that the criminal charges herein aforesaid be dismissed and your petitioner be discharged and set at liberty; alternatively that a rule nisi issue herein directed to Honorable Sam Cashio, District Attorney, ordering him to show cause on a date designated by this Honorable Court why a speedy hearing should not be granted as to all of the criminal charges herein mentioned to the end that there may be an expeditious disposition of said charges and that petitioner be vindicated and set free.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Petitioner

APPENDIX B-2

LOUISIANA SUPREME COURT
DOCKET NUMBER 49,125

STATE OF LOUISIANA, EX REL.,
RODERICK JENKINS

VERSUS

HONORABLE G. ROSS KEARNEY, JR.,
Judge, Eighteenth Judicial District

In Re: STATE OF LOUISIANA

VERSUS

RODERICK JENKINS

Numbers 9840, 9841, 9842, 9843

APPLICATION FOR WRITS OF MANDAMUS AND PROHIBITION TO THE EIGHTEENTH JUDICIAL DISTRICT COURT, PARISH OF IBERVILLE, SATE OF LOUISIANA

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Relator

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The State of Louisiana, on the relation of Roderick Jenkins, applying for writs of mandamus and prohibition or an alternative writ of mandamus and prohibition directed to Honorable G. Ross Kearney, Jr., District Judge, Eighteenth Judicial District, in and for the Parish of Iberville, State of Louisiana, respectfully represents that:

STATEMENT OF THE CASE

On February 15, 1968, Honorable Sam Cashio, District Attorney, in and for said judicial district, filed a bill of information against relator, assigned as docket number 9840, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one W. O. Bergeron; a bill of information, assigned as docket number 9841, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Warren Shores; a bill of information, assigned as docket number 9842, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Alfred Bergeron; a bill of information, assigned as docket number 9843, whereby relator is charged with a criminal conspiracy to commit a battery with a dangerous weapon on one Cornelius Green, and said criminal offenses are alleged to have been committed in Iberville Parish, Louisiana, on January 17, 1968; in due course relator was arrested and released on bond.

On February 20, 1968, relator filed a petition for a preliminary examination or alternatively for a speedy

trial as to said charges, alleging that said criminal charges were scandalously and willfully false and without factual support whatsoever and that furthermore, according to his information, the filing of said criminal charges against him was but the product of a conspiracy among state officials, including John Julien McKeithen, Governor of the State of Louisiana, willfully and deliberately to falsely prosecute relator with a view to denying and depriving relator of his constitutional liberties as a means of discrediting the Teamsters Labor Union organization of Baton Rouge, Louisiana, of which your relator is a member, and ultimately for the purpose of discrediting and destroying the effectiveness of one Edward Grady Partin, Business Agent of said Teamsters Local Union No. 5 of Baton Rouge, Louisiana, and with a further view of generating a public climate that will encourage the enactment of punitive legislation against labor unions of Louisiana at the next regular session of the Legislature of the State of Louisiana to be convened during May, 1968.

Relator further alleged in his said application that at no time material to the criminal activities mentioned in the said bills of informaton was he anywhere in the Parish of Iberville, State of Louisiana; on the contrary he informed the court that he was engaged in the discharge of his duties of his employment with Kaiser Engineers, a Division of Henry J. Kaiser Company, with plant facilities in Baton Rouge, Louisiana; further relator alleged that on the morning of January 17, 1968, he reported to the site of his employment at Baton Rouge, Louisiana, aforesaid at 6:30 A.M. and there remained continuously until the termination of his employment for the day at or about 5:30 P.M.; that he functioned as a warehouse-

man in a warehouse building located on a construction site of the Henry J. Kaiser Company property located on the Mississippi River near the City of Baton Rouge, Louisiana. Relator further informed the said respondent judge in his petition that he had nothing whatever to do with the alleged criminal offenses charged in said bills of information and that except to post his bail bond, he had never been in Iberville Parish, Louisiana, for the year 1968 and to his recollection he had not been in Iberville Parish for the past three to four years and then his appearance therein at that time was of a transitory nature only.

Further relator informed said district judge through his said petition that the false charges against him have exposed him to ridicule and public hatred; that John Julien McKeithen, Governor of Louisiana, has made repeated public statements identifying those charged with criminal offenses in Iberville Parish, Louisiana, as hoodlums and gangsters comparable in character to the Mafia and notorious underworld figures; that the continuance of said charges against your relator unjustly and unfairly exposes relator to public hatred and ridicule and that because of his innocence he is entitled to and desires to have an expeditious disposition made of the false charges filed against him and prayed that a preliminary examination be granted so that it could be shown preliminarily that there is no basis whatever for the criminal charges filed against him and alternatively that said criminal charges be set down for a speedy hearing so that he may be restored to his liberty.

Relator alleges, however, that respondent District Judge Kearney, to whom the application has been assigned, has failed and refused to take any action what-

ever concerning your relator's application. He has failed to deny or grant the relief prayed for.

QUESTIONS OF LAW

1. Can a district court judge, by refusing to take any action whatever, deny to a citizen of the state his right to a preliminary examination, where he informs the court by formal petition that he is innocent of the charges filed against him?

2. Can a district court judge, by refusing to take any action in connection with an application therefor, deny to a citizen the right to a speedy trial of false criminal charges filed against him?

ARGUMENT

Under the provisions of Louisiana Code of Criminal Procedure, Articles 291, et seq., relator is entitled to present to the respondent judge an application for a preliminary examination and reciprocally to have said respondent judge take official action in connection therewith. It is a gross abuse of discretion for said respondent judge to refuse to take any action whatever and thus defeat relator's right to a preliminary examination.

Relator further states that under the affirmative allegations of his petition, a copy of which is annexed hereto, relator is entitled to a preliminary examination. Under the circumstances alleged by relator, no citizen of the State of Louisiana should be put to the expense and ignominy of a public trial on criminal charges where there exists no legal basis whatever for the charges. Relator informs this court that he can establish his innocence beyond any doubt whateever. The records of the

Henry J. Kaiser Company establish conclusively that he was nowhere near the site of the crime and that he can produce credible evidence from witnesses having personal knowledge thereof that he was otherwise not involved in the criminal activities charged against him. Relator can establish furthermore that the filing of the criminal charges against him resulted from intimidation of public officials by John Julien McKeithen, Governor of the State of Louisiana, threatening responsible officials with ouster from public office proceedings if they failed or refused to indiscriminately file charges against members of Teamsters Local Union No. 5 of Baton Rouge, Louisiana. Relator's innocence can be established expeditiously by a preliminary examination. And while at this stage of the proceedings the granting or withholding of a preliminary examination rests in the discretion of respondent judge, that discretion is not unlimited, but is subject to review and control by this Honorable Court. *State v. Bertrucci,* 155 La. 108, 1, 99 So. 882. It would be an abuse of this discretion, in the light of the allegations contained in relator's petition for a preliminary examination, were said respondent judge to deny the application.

Furthermore, Louisiana Constitution, Article 1, Section 9, expressly provides that in all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury. In the alternative this is the very least to which relator is entitled. As to this there can be no dispute. Despite this undisputable fact, respondent judge refuses to take any official action in connection with your relator's said application. Such conduct instances a gross abuse of discretion. Moreover, this inaction denies to your relator constitutional due process

and equal protection secured to him by the Constitution of Louisiana and the Fourteenth Amendment to the United States Constitution.

WHEREFORE RELATOR PRAYS that writs of mandamus and prohibition be granted and accordingly respondent Judge G. Ross Kearney, Jr., be commanded forthwith to take action on relator's application for a preliminary examination and/or a speedy trial and that he be directed to grant a preliminary examination to your relator herein and prohibited from taking any steps or pursuing any course of conduct that may have the effect unduly to delay any hearing to your relator herein.

RELATOR FURTHER PRAYS for all such additional orders as the court shall see fit and proper to grant.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Relator

VERIFICATION

STATE OF LOUISIANA
PARISH OF LAFAYETTE

Before me, the undersigned authority, personally came and appeared J. Minos Simon, who being first duly sworn, did depose and say:

"That he is of counsel in the foregoing application for writs of mandamus and prohibition; that he has prepared and read the said application and that all of the allegations of fact contained therein are true and correct save and except those made on information and as to those affiant verily believes the same to be true and correct to the best of his knowledge, information and belief; that documents annexed to said application are true and correct reproductions of the originals thereof; that copies of this application were mailed to Honorable G. Ross Kearney, Jr., District Judge, Eighteenth Judicial District, in and for the Parish of Iberville, State of Louisiana, and to Honorable Sam Cashio, District Attorney, Eighteenth Judicial District, Parish of Iberville, State of Louisiana, on the 28th day of February, 1968.

J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 28th day of February, 1968, at Lafayette, Louisiana.

Notary Public

APPENDIX B-3

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

February 29, 1968

No. 49,125

STATE OF LOUISIANA

v.

RODERICK JENKINS

In re: Roderick Jenkins applying for writs of mandamus and prohibition.

The application is denied. The showing made does not warrant the exercise of our supervisory jurisdiction.

/s/ WBH
/s/ JWS
/s/ EHMcC
/s/ MEB
/s/ JBF
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
February 29, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX B-4

EIGHTEENTH JUDICIAL DISTRICT COURT

NOS. 9840, 9841, 9842, 9843

IBERVILLE PARISH, LOUISIANA

STATE OF LOUISIANA

VERSUS

RODERICK JENKINS

OPINION AND REASONS FOR JUDGMENT

This is a proceeding by Roderick Jenkins applying for a preliminary examination and in the alternative for a speedy hearing on all the criminal charges filed against him and fully set forth in the applicant's petition.

An information was filed on these charges prior to petition for preliminary examination or alternatively for a speedy hearing.

As regards the motion for the right to a preliminary examination, the filing of the bill of information leaves it within the discretion of the Court to grant said hearing.

Inasmuch as the bills of information have charged the accused with a crime and inasmuch as the accused is now out on bail, a preliminary hearing would serve no useful purpose; therefore it is the opinion of the Court that a preliminary hearing be denied.

As regards the motion for a speedy hearing, the jury commission has been ordered to meet and to draw petit jurors to serve at the regular criminal term of court for Ibeville Parish to commence April 15th, 1968, at which term the trial of jury cases will commence and it is most impracticable to schedule a speedy trial before said jury

term as requested by applicant and the motion for a speedy trial should be denied.

Judgment will be rendered and signed according.

Thus done and signed in Plaquemine Parish of Iberville, La., this 1st day of March, 1968.

(Signature Not Legible)

Judge

(Filed March 1, 9:59 A.M. '68)

(Signature Not Legible)

Dy: Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

A TRUE COPY

Mar. 1, 1968

(Signature Not Legible)

Deputy Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

EIGHTEENTH JUDICIAL DISTRICT COURT
NOS. 9840, 9841, 9842, 9843
IBERVILLE PARISH, LOUISIANA

STATE OF LOUISIANA
VERSUS
RODERICK JENKINS

JUDGMENT

These matters of applications by applicant were reviewed by the Court and for written reasons this day assigned it is ordered that the motions of applicant be refused.

Thus done, read and signed in open Court at Plaquemine, Iberville Parish, Louisiana, on this 1st day of March, 1968.

(Signature Not Legible)

Judge

(Filed Mar. 1, 9:59 A.M. '68)

(Signature Not Legible)

Dy. Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

A TRUE COPY
Mar. 1, 1968.

(Signature Not Legible)

Deputy Clerk, Ex-officio, Recorder
Iberville Parish, Louisiana

APPENDIX C-1

SCHEDULE OF BAIL INCREASE

Name	*Original Bail*	*Bail Increased To*
Jerry Sylvester	$10,000	$28,000
Terry George	$10,000	$28,000
Jerry Kinchen	$10,000	$28,000
Edgar Coleman	$10,000	$28,000
Tommy Craig	$10,000	$28,000
Alton Holden	$ 8,000	$20,000
Hugh Marionneaux	$ 8,000	$20,000
Emery C. Hendrick	$ 8,000	$20,000
Lloyd W. Kinchen	$ 8,000	$20,000
Emmett Tucker	$ 8,000	$20,000
Gene C. Fontenot	$ 8,000	$20,000
Billy Dardeau	$ 8,000	$20,000
Byron D. Vidrine	$ 8,000	$20,000

APPENDIX C-2

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBER .....

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

JERRY SYLVESTER

MOTION TO REINSTATE PRIOR BAIL BOND; ALTERNATIVELY TO REDUCE CURRENT BAIL BOND

JERRY SYLVESTER, appearing through counsel, respectfully moves the court to recall its recent order whereby defendant's prior bail bond was set aside and to reinstate his said prior bail bond; alternatively to reduce the current bail bond to an amount which shall be reasonable and fair, considering the exigencies and pertinent facts, say to the amount of not more than One Thousand ($1,000.00) Dollars for each criminal charge, in support whereof movant alleges that:

1.

Movant's original bail bond was set aside and the current one substituted therefor without notice to movant and without the granting of any hearing whatever; that the order of the court thus contrived or issued is null and void inasmuch as the process by which it was issued deprived movant of constitutional due process and equal protection secured by the Fourteenth Amendment to the United States Constitution.

2.

Furthermore, no good cause existed for the issuance of said order nor was any such good cause established and therefore said order cancelling movant's prior bond and supplanting it with the current bail bond is null and void.

WHEREFORE MOVANT PRAYS that the order of this court cancelling movant's prior bail bond and supplanting it with another one be recalled and set aside and movant's prior bond after being appropriately reduced, be reinstated; alternatively, movant prays that the current bail bond be reduced to an amount not in excess of One Thousand ($1,000.00) Dollars.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Defendant

APPENDIX D-1

IN THE

LOUISIANA SUPREME COURT

NUMBER 49,507

STATE OF LOUISIANA, EX REL.,
STANLEY H. JACKSON

VERSUS

HONORABLE DANIEL P. KIMBALL, Judge

In Re:

STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

Docket Numbers: 9838, 9845, 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Defendant

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The petition of the State of Louisiana on the relation of Stanley H. Jackson, applying for a writ of certiorari, mandamus and prohibition as to Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, respectfully represents that:

STATEMENT OF THE CASE

Nineteen Bills of Information charging relator with the crime of public bribery have been filed and are pending against relator in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana. These Bills of Information are lodged in that court under Criminal Docket Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270, 10,271, 9838 and 9845.

These criminal prosecutions against relator have been fixed for trial on the merits for September 30, 1968. Because of the approaching trial on the merits it is imperative that immediate action be taken on this application for writs of certiorari, mandamus and prohibition. The exigencies justifying the granting of these writs are as follows:

On September 13, 1968, a hearing on relator's motions for Bill of Particulars in each case was conducted. At the outset counsel for relator objected to the effort of the Attorney General to function exclusively as the prosecuting attorney in the nineteen cases filed against him.

Respondent Judge Daniel P. Kimball overruled relator's objection. Relator thereupon promptly reserved a Bill of Exception and prayed for leave of court to establish the factual basis of his Bill of Exception. Respondent Judge refused to permit relator to establish the factual basis of his Bill of Exception. As pointed out to respondent Judge in outlining what was intended to be established by the proffered evidence, counsel for relator stated:

> "The burden of my objection is that the Attorney General cannot come into court and effectively supplant the District Attorney and you can't mask an intent and a purpose to supplant by filing a motion which either disavows it or implicitly disclaims it. We have a right to show that the implicit disclaimer of supplanting the District Attorney is *not factually founded, that the contrary is true.* I think we can show, and I think your Honor will certainly probably concede or make a judicial, — make a statement acknowledging it judicially, that the District Attorney has not been managing these cases, but it has been exclusively handled by the Attorney General's Office, so we submit that the record at this time does not show anything of this kind. There is nothing, for example, if this question is presented to the Louisiana Supreme Court, in the event it should go there, should it ever be presented to that court. Counsel may talk all day long before that court and tell the court that the Attorney General's Office has been the one exclusively handling these cases, that the District Attorney made no appearances on no occasion, and that they effectively supplanted the District Attorney's Office, and all the Louisiana Supreme Court is going to tell counsel is that 'Counsel, I am sorry, but there is no factual basis at all in this record indicating what you are saying'."

Despite the insistence of relator's counsel that relator

be permitted to establish the factual basis of his objection, namely, that the Attorney General in fact had supplanted the District Attorney of Iberville Parish, Louisiana, without cause or justification and without legal authority and therefore the Attorney General was not the legally constituted person to prosecute relator, said respondent Judge refused to permit relator to exercise such a critically significant right despite the following plea by relator's counsel:

> "I would be horrified to believe, if Your Honor please, and I say this respectfully, that a litigant who is not entitled to his transcript by virtue of state law would be completely barred from utilizing the only possible legal vehicle available to demonstrate the factual predicate of all rulings of this court."

Similarily during said hearing relator excepted to the ruling of respondent judge as to his motions for Bills of Particulars in each of the seventeen charges filed against relator and reserved a Bill of Exception. Relator, through counsel, then moved for leave of court to establish the factual basis of his Bills of Exceptions. Respondent Judge denied the request and precluded relator from eliciting evidence to establish the factual basis of his Bills of Exceptions. Without this evidentiary predicate his Bills of Exceptions are wholly meaningless. On review to this Court, should the matter come on review, there will be nothing for this Court to base any intelligent evaluation of the validity of the rulings of respondent Judge. Notably among the things sought to be established as the factual predicate of his Bills of Exceptions was the fact that the seventeen (17) charges filed against relator relate to one continuous transaction as to which the State has arbitrarily carved out seventeen

(17) separate criminal charges when in fact each can amount to no more than separate counts as to one criminal act.

Not only has respondent Judge refused to permit relator to establish the factual basis of his Bills of Exceptions, but said respondent Judge has refused to have the court reporter supply relator with a transcript of his Bills of Exceptions unless relator pays for such transcript.

ISSUES AND QUESTIONS OF LAW PRESENTED

Only irreparable injury can be experienced by relator if this, his application for writs, is denied. This is true because the right to a hearing in a criminal proceeding in Louisiana is meaningless where the accused is denied the right to perfect his Bills of Exceptions, because without Bills of Exceptions, there is nothing for review by the appellate court. Thus, the grievous errors complained of in this application cannot be remedied by an appeal after trial on the merits. Confronting relator is the imminent prospect of being subjected to the ignominy of a public trial, to the financial burden of sustaining it, and to the scourge of criminality to result if he should be convicted. All this will occur under the auspices of a hearing where relator cannot effectively preserve the record so as to insure an effective appeal from any adverse decision. The totality of his prospect, in the event of a conviction, is that he will have to be prepared to be tried at least twice for the same offense.

Moreover, not only does the conduct of respondent Judge deprive relator of rudimentary procedural rights, but he is denied the equal protection of state laws, in that respondent Judge refuses to provide him with a

transcript of his Bills of Exceptions unless relator is prepared to pay for this, notwithstanding the unarguable law that such a transcript must be provided free of charge to him by the State.

ASSIGNMENT OF ERROR

1. It is prejudicial and reversible error for respondent Judge to have refused to permit relator to perfect his Bills of Exceptions by establishing the evidentiary basis of his Bills and to refuse to provide him with a transcript of his Bills of Exceptions without charge.

ARGUMENT

It is axiomatic in Louisiana that in criminal cases only formal Bills of Exceptions properly perfected can be considered by this court on appeal. Article 844 of the Code of Criminal Procedure expressly provides:

> "(a) The appellate court shall consider *only formal Bills of Exceptions* which have been signed by the trial judge in conformity with Article 845. * * *
>
> "(b) A formal Bill of Exception shall contain only the evidence necessary to form a basis for the bill and *must show* the circumstances and the evidence upon which the ruling was based. * * *"

Article 843 provides:

> "When a bill of exception is reserved, the clerk or the court stenographer shall immediately take down the objection, the ruling, and the *FACTS* upon which the *OBJECTION* is based. The matters, so taken down, shall be preserved among the records of the trial, shall constitute the bill of exception, and shall be a basis for a formal bill of exception."

This Court, of course, will never be in a position to consider the validity of the rulings of respondent Judge complained of by relator if the Bills of Exceptions reserved do not show "the circumstances and the evidence upon which" these rulings were based. As a consequence, relator is forever barred of an effective appeal as to these rulings. Thus he has no remedy by appeal as to these rulings. The most that he can expect from an appeal in the present posture of this litigation is a reversal of his conviction based upon the refusal of respondent Judge to permit him to establish his Bills of Exceptions as provided and directed by the laws of the State of Louisiana. For example, relator contends that he can show, and establish an evidentiary basis that will disclose, that the Attorney General of Louisiana has supplanted the District Attorney of Iberville Parish in connection with the prosecution of relator. On making such a showing, the ruling of the District Judge in permitting the Attorney General to function in such a capacity is erroneous and consequently results in a denial to relator of his constitutional liberties secured by the Constitution of Louisiana and by the United States. *Kemp v. Stanley,* 204 La. 110, 15 So.2d 1 (1943).

In effect, relator is being denied of a meaningful hearing; he is being denied of the effective assistance of counsel; he is being denied of an effective right of appeal. These denials are utterly irreversible, except by the granting of writs applied for in this instance. A fundamental requirement of due process, however, is the opportunity to an effective and meaningful hearing. In *Armstrong v. Manzo,* 85 S.Ct. 1187, at p. 1191, the United States Supreme Court said:

"A fundamental requirement of due process is

> *'the opportunity to be heard'. Grannis v. Ordean,* 234 U.S. 385, 394, 34 S.Ct. 779, 783. *It is an opportunity which must be granted at a meaningful time and in a meaningful manner."*

In the instant case the right to be heard necessarily embodies the right to establish the factual basis of Bills of Exceptions, inasmuch as these are the only vehicles available to relator and any other citizen similarly situated to preserve the record for appellate review. Respondent Judge, however, has already denied this right to relator and presumably will act consistently hereafter. The denial of such a right constitutes a denial of constitutional due process. In *Holt v. Commonwealth of Virginia,* 85 S.Ct. 1375, 1378, the United States Supreme Court held:

> *"The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues. * * *"*

Not only has relator been denied of the right to effectively preserve his Bills of Exceptions as already pointed out, but relator has been denied of the right to be supplied without cost with a transcript of even the imperfect Bills of Exceptions. This respondent Judge has done despite the mandatory provisions of Article 843 of the Code of Criminal Procedure. The Court called upon Mrs. Janet L. Parker of Baton Rouge to serve as court reporter during this hearing. In transmitting only an uncertified copy of this transcript to undersigned counsel she advised:

> "Attached hereto please find a carbon copy of the hearing on the motions in re State of Louisiana v. Stanley H. Jackson, as ordered transcribed by you this past Monday, and our invoice in the amount of

> $115.50 to cover same. After talking with you this afternoon, I called Judge Kimball who told me that since the matter had not yet been tried and since you had ordered it transcribed, not the State, that you should be billed for same. We will be happy to give you a receipted invoice so that your client may be refunded his money by the State once the matter is decided."

There is no authority for respondent Judge to mulct your relator for any costs in connection with these criminal prosecutions of your relator. No citizen of the State of Louisiana is required to pay for a transcript of his Bills of Exceptions and the facts upon which his objection is based. The act of respondent Judge refusing to supply relator with such a transcript constitutes an invidious discrimination against relator and consequently denies him of constitutional due process and equal protection secured to him by the United States Constitution and the Constitution of the State of Louisiana.

Relator faces the immediate prospect of being prosecuted on nineteen separate occasions. On none of these occasions will he be permitted to establish the factual basis of his Bills of Exceptions as authorized by the laws of the State of Louisiana. On none of these occasions, therefore, will he be able to preserve the record so as to enjoy an effective appeal from the rulings of the district court. He will be thus without remedy on appeal. He is therefore in imminent danger of suffering irreparable injury unless this Honorable Court grants writs as prayed for.

WHEREFORE RELATOR PRAYS that writs of certiorari, mandamus and prohibition issue immediately directed to Honorable Daniel P. Kimball, Judge,

Eighteenth Judicial District Court in and for the Parish of Iberville, State of Louisiana, ordering him forthwith to cease and desist from conducting any further hearings in connection with the prosecution of your relator and further ordering said respondent Judge to cause to be forwarded to this Court the records of these proceedings and further ordering a reversal of his said rulings herein complained of and commanding said respondent Judge to supply to relator a transcript of all Bills of Exceptions reserved by him without cost and to permit relator to establish the factual basis of his Bills of Exceptions or alternatively to show cause on a date designated by this Honorable Court why said writs of certriorari, mandamus and prohibition should not issue as prayed for.

AND FOR SUCH ADDITIONAL ORDERS as this Court shall consider proper and require.

J. MINOS SIMON
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Relator

APPENDIX D-2

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

September 24, 1968

No. 49,507

STATE OF LOUISIANA
v.
STANLEY H. JACKSON

In re: Stanley H. Jackson applying for writs of certiorari, mandamus and prohibition.

The application is denied. The defendant has an adequate remedy by appeal in the event of his conviction.

/s/ JBF
/s/ EHMcC
/s/ WBH
/s/ JWS

SUMMERS, J., dissents from the refusal to grant writs. It was error for the court to refuse to furnish relator with a certified copy of the transcript to serve as a basis for perfecting bills of exceptions, which could, in turn, support the allegations of this application.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
September 24, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX D-3

IN THE

LOUISIANA SUPREME COURT

NUMBER 49,510

STATE OF LOUISIANA, EX REL.,
STANLEY H. JACKSON

VERSUS

HONORABLE DANIEL P. KIMBALL, Judge

In Re:

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBER 10,270

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

ON APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Relator

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The petition of the State of Louisiana on the relation of Stanley H. Jackson, applying for a writ of certiorari, mandamus and prohibition as to Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, respectfully represents that:

STATEMENT OF THE CASE

Relator is charged with the crime of public bribery in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, in nineteen Bills of Information. One of these Bills of Information entitled *State of Louisiana versus Stanley H. Jackson,* bearing criminal docket number 10,270, has been set for trial for September 30, 1968. Because of the approaching trial of the merits it is imperative that immediate action be taken on this application for writs of certiorari, mandamus and prohibition. The exigencies justifying the granting of these writs are as follows:

On September 23, 1968, an amendment to the Bill of Information as to criminal docket number 10,270 was permitted filed over relator's objection. At the outset counsel for relator objected to the effort of the Attorney General to function exclusively as the prosecuting attorney in connection with this criminal prosecution based on the unarguable fact that the Attorney General of the State of Louisiana had supplanted and superseded the District Attorney of the Eighteenth Judicial District, Mr. Sam Cashio. Respondent Judge Daniel P. Kimball overruled relator's objection. Relator thereupon

promptly reserved a Bill of Exceptions and moved for leave of court to establish the factual basis of his Bill of Exception. Respondent Judge refused to permit relator to establish the facts upon which the objection was based. Thereupon relator gave notice of his intention to apply to this Court for remedial writs. The objection, the motion for leave of court to establish the factual predicate of the objection and the giving of notice to apply for these writs are exemplified by the annexed copy of the transcript of the colloquy between relator's counsl and the court.

ISSUES AND QUESTIONS OF LAW PRESENTED

Despite the fact that this Court already has denied relator's application for remedial writs in connection with this criminal prosecution based upon the court's ruling that relator has a remedy by appeal, relator earnestly submits to the Court that such a ruling is erroneous and that in truth and in fact relator has no remedy by appeal from the refusal of respondent Judge to permit relator to establish the factual basis of his Bill of Exception. This application therefore presents to this Court a question of law which can never be again presented to this Court, because the validity of the ruling of the trial Judge can never effectively be brought before this Court on appeal. Any appeal to which relator might be remitted can never contain the essential facts upon which the objection is raised so as to permit this Court to pass upon the validity of that ruling. The effect of the ruling is to conduct a hearing where relator cannot effectively preserve the record so as to insure an effective appeal from any adverse decision. Relator therefore stands to suffer gross irreparable injury if his application is not granted.

ASSIGNMENT OF ERROR

1. It is prejudicial and reversible error, resulting in irreparable injury, for respondent Judge to have refused to permit relator to perfect his Bill of Exceptions by establishing the evidentiary basis of his exceptions.

ARGUMENT

It is axiomatic in Louisiana that in criminal cases anly formal Bills of Exceptions properly perfected can be considered by this Court on appeal. Article 844 of the Code of Criminal Procedure expressly provides:

> "(a) The appellate court shall consider *only formal Bills of Exceptions* which have been signed by the trial judge in conformity with Article 845. * * *
>
> "(b) A formal Bill of Exception shall contain only the evidence necessary to form a basis for the bill and *must show* the circumstances and the evidence upon which the ruling was based. * * *"

Article 843 provides:

> "When a Bill of Exception is reserved, the clerk or the court stenographer shall immediately take down the objection, the ruling, and the *FACTS* upon which the *OBJECTION* is based. The matters, so taken down, shall be preserved among the records of the trial, shall constitute the Bill of Exception, and shall be a basis for a formal Bill of Exception."

This Court of course will never be in a position to consider the validity of the rulings of respondent Judge complained of by relator if the Bills of Exceptions reserved do not show "the circumstances and the evidence upon which" these ruling were based. As a consequence,

relator is forever barred of an effective appeal as to these rulings. Thus he has no remedy by appeal as to these rulings. In the light of this Court's refusal to grant relator his previous application for remedial writs, based on the ruling that relator has a remedy by appeal, further analysis is indicated to demonstrate that the Court's view that relator has a remedy by appeal is not well-founded.

At the outset relator respectfully submits that if the Attorney General has superseded or supplanted the District Attorney of the Eighteenth Judicial District, then by virtue of the decision of this Court of *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1 (1943), relator cannot be legally prosecuted by the Attorney General. Proceeding forward from this postulate and assuming that in the instant case relator is convicted, this Court will not have before it the legality of the status of the Attorney General in connection with the prosecution of your relator. What will be before this Court is simply the legality of the ruling of respondent Judge in refusing to permit relator to establish the factual basis of his Bill of Exceptions. This Court on such an appeal would not then be in a position to determine the legality of the status of the Attorney General in the prosecution of your relator, for the simple reason that there would not be before this Court the evidentiary basis upon which relator's objection is founded. Thus, the most that this Court could do on such an appeal would be to reverse his conviction and order a new trial. On new trial the Attorney General could again function as prosecutor. If, on making an objection of an identical nature to the status of the Attorney General as prosecutor, on such a new trial, respondent Judge should elect on that occasion to com-

ply with the law and recognize relator's unarguable right to elicit and establish the facts upon which his objection is based, then for the first time this Court will have for consideration on appeal from an adverse decision the legality of the status of the Attorney General in acting as prosecuting attorney against your relator. Thus relator must be convicted twice before he can present to this Court the merits of his objection to the Attorney General functioning as prosecuting attorney against him. At best on such a second appeal this Court again would have to order a new trial, should it find that the Attorney General in fact has supplanted the District Attorney and that the Attorney General was without authority to prosecute relator. This Court then would have to again order a new trial. Thus relator would be subjected to three separate prosecutions for the same offense before the occasion would arise that he were proscuted by a duly constituted prosecutor.

The irreparable prejudice of such a consequence is unbelievably enormous. Relator of course would have to undergo the ignominy of three public trials. He would have to sustain the financial burden of such trials. And with the prevailing and pervasive bias and prejudice of respondent Judge in these proceedings, relator has no doubt but that on each conviction the presiding Judge will impose upon relator the maximum sentence, in consequence of which he will have to remain in prison until this Court reverses each of his convictions. Assuming that the period of time elapsing between his conviction and the hearing by this Court on his appeal will be not less than eight months, then he will have served a total of twenty-four months before the final adjudication on appeal by this Court.

In effect, relator is being denied of a meaningful hearing; he is being denied of the effective assistance of counsel; he is being denied of an effective right of appeal. These denials are utterly irreversible, except by the granting of writs applied for in this instance. A fundamental requirement of due process, however, is the opportunity to an effective and meaningful hearing. In *Armstrong v. Manzo,* 85 S.Ct. 1187, at p. 1191, the United States Supreme Court said:

> "A fundamental requirement of due process is *'the opportunity to be heard'. Grannis v. Ordean,* 234 U.S. 385, 394, 34 S.Ct. 779, 783. *It is an opportunity which must be granted at a meaningful time and in a meaningful manner."* .

In the instant case the right to be heard necessarily embodies the right to establish the factual basis of Bills of Exceptions, inasmuch as these are the only vehicles available to relator and any other citizen similarly situated to preserve the record for appellate review. Respondent Judge, however, has already denied this right to relator and presumably will act consistently hereafter. The denial of such a right constitutes a denial of constitutional due process. In *Holt v. Commonwealth of Virginia,* 85 S.Ct. 1375, 1378, the United States Supreme Court said:

> *"The right to be heard must necessarily embody a right to file motions and pleadings essential to present claims and raise relevant issues.* * * *"

WHEREFORE RELATOR PRAYS that writs of certiorari, mandamus and prohibition issue immediately directed to Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District Court in and for the Parish of Iberville, State of Louisiana, ordering him forthwith to cease and desist from conducting any further hearings

in connection with the prosecution of your relator and further ordering said respondent Judge to cause to be forwarded to this Court the records of these proceedings and further ordering a reversal of his said ruling herein complained of and commanding said respondent Judge to permit relator to establish the factual basis of his Bills of Exceptions or alternatively to show cause on a date designated by this Honorable Court, why said writs of certiorari, mandamus and prohibition should not issue as prayed for.

AND FOR SUCH ADDITIONAL ORDERS as this Court shall consider proper and require.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Relator

APPENDIX D-3

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

September 27, 1968

No. 49,510

STATE OF LOUISIANA

v.

STANLEY H. JACKSON

In re: Stanley H. Jackson applying for writs of certiorari, mandamus and prohibition.

The application is not considered. In reality applicant is seeking a rehearing on the refusal of his application in No. 49,507, which was denied on September 24, 1968, contrary to Section 5 of Rule IX of the rules of this Court.

/s/ EHMcC
/s/ JBH
/s/ WBH
/s/ JWS
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
September 27, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX D-4

LOUISIANA SUPREME COURT

DOCKET NUMBER 49,523

STATE OF LOUISIANA, EX REL.,
STANLEY H. JACKSON and JERRY SYLVESTER

VERSUS

HONORABLE DANIEL H. KIMBALL, ET AL.

EIGHTEENTH JUDICIAL DISTRICT COURT

NUMBERS 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270, and 10,271

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

* * * *

EIGHTEENTH JUDICIAL DISTRICT COURT

CRIMINAL ACTION NUMBERS 9752, 9753, 9754, 9755, 10,314, 10,315, 10,316, and 10,317

PARISH OF IBERVILLE, LOUISIANA

STATE OF LOUISIANA

VERSUS

WADE McCLANAHAN, EDGAR COLEMAN, TERRY GEORGE, JERRY KINCHEN, TOMMY CRAIG, JERRY SYLVESTER

ORIGINAL APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

Attorney for Stanley H. Jackson and Jerry Sylvester

TO THE HONORABLE, THE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE LOUISIANA SUPREME COURT:

The petition of the State of Louisiana on the relation of Stanley H. Jackson and Jerry Sylvester, applying for writs of certiorari, mandamus and prohibition, respectfully represents that:

STATEMENT OF THE CASE

In the criminal prosecutions entitled *State of Louisiana v. Stanley H. Jackson,* bearing criminal actions numbers 10,255 through 10,271, lately pending before the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, relator Stanley H. Jackson is charged with the crime of public bribery. In the criminal prosecutions entitled *State of Louisiana v. Jerry Sylvester, et al.,* bearing criminal actions numbers 9752 through 9755, relator Jerry Sylvester is charged with the crime of criminal conspiracy to commit aggravated battery, and in criminal actions numbers 10,314 through 10,317, said relator Sylvester is charged with the crime of aggravated battery.

In due course the matter of *State of Louisiana v. Stanley H. Jackson,* bearing docket number 10,270 aforesaid was assigned for trial for September 30, 1968; on September ...., 1968, relator Stanley H. Jackson filed the following motion for a change of venue as to criminal action number 10,270 fixed for trial as herein aforesaid, to-wit:

"

MOTION FOR CHANGE OF VENUE

Stanley H. Jackson, appearing through counsel, makes this, his application for a change of venue,

not for the purpose of delay, but to obtain a fair and impartial trial, in support whereof movant alleges:

1.

Movant alleges that the captioned charge as well as the other eighteen charges filed against him arise out of and stem from a labor dispute between members of Teamsters Local Union No. 5 and non-union employees of W. O. Bergeron, Contractor, including W. O. Bergeron himself.

2.

The culmination of violence between these two opposing groups aforesaid was preceded by peaceful picketing activities on the part of those protesting the non-union employment practices of the said W. O. Bergeron; on the date of the violence aforesaid the protesting union members were set upon with firearms by the non-union employees of the said W. O. Bergeron and W. O. Bergeron himself, in response to which, as a matter of self-defense only, movant is informed that said aggravated criminal assault by the employees of the said W. O. Bergeron and W. O. Bergeron himself was returned in kind by persons other than movant.

3.

Movant alleges however that because of Governor John J. McKeithen's political antipathy for labor unions and his consuming inveterate hatred for Edward Grady Partin, Business Agent for Teamsters Local Union No. 5, and all members of Teamsters Local Union No. 5 aforesaid, he, the said Governor John J. McKeithen, willfully and deliberately set in motion a vile, intemperate and irresponsible plan or scheme to bring about the conviction and imprisonment of members of Teamsters Local Union No. 5 and any persons associated with them or

otherwise identified with them, regardless of their guilt or innocence, in the process of which he demanded and encouraged any form of punitive action against said union members and those associated with them or otherwise identified with them, including your movant, knowing, or having good reason to know, that the exchange of fire was provoked by non-union employees of W. O. Bergeron and W. O. Bergeron himself; in furtherance of that scheme it was determined and decided by McKeithen and those acting in concert with him that under no circumstances were any of the employees of the said W. O. Bergeron or W. O. Bergeron himself to be either charged or prosecuted for having provoked, initiated or participated in said violence.

4.

In furtherance of that scheme the said Governor John J. McKeithen took advantage of his position of high office, including his easy accessibility to the news media, and proceeded to develop and set in motion a barrage of irresponsible statements for widespread circulation through the news media, derogatory and accusatory of members of Teamsters Local Union No. 5 and those associated with them or otherwise identified with them, including your movant, including the repeated statement that members of Teamsters Local Union No. 5 were responsible for this violence, that they were hoodlums and gangsters of such magnitude and depravity as being able to give lessons to the infamous underworld organization known as the Mafia, and implied that former Sheriff Jessel Ourso of Iberville Parish, Louisiana, was associated with said Teamsters members so characterized and aided, abetted and coddled them in the fulfillment of their alleged nefarious deeds and objectives; said McKeithen furthermore threatened with ouster from public office any public official who was reluctant in the the prosecution —

the discriminatory prosecution – of all those who are identified with members of Teamsters Local Union No. 5, including said members.

5.

Movant alleges that he has been repeatedly linked in public statements and in press releases, including public statements over all news media, with the former Sheriff Jessel Ourso and members of Teamsters Local Union No. 5 aforesaid to such an extent that there is widespread prejudice against movant of such a nature as to make it impossible for him to receive a fair and impartial trial in Iberville Parish, Louisiana.

6.

In furtherance of the scheme aforesaid there have resulted massive arrests of members of Teamsters Local Union No. 5 and those identified therewith, including your movant; knowingly false charges have been filed against said persons; witnesses for and against said accused, including your movant, have been threatened in connection with the prospective giving of their testimony in connection with said criminal prosecution; the Attorney General of the State of Louisiana has deliberately without cause and contrary to the provisions of the State Constitution intruded himself into these prosecutions and has in fact supplanted, again without cause, the function and duties of the District Attorney of Iberville Parish, Louisiana; according to your movant's information all documents prepared in connection with the massive criminal prosecution of the persons accused as aforesaid, including your movant, have been prepared by the Office of the Attorney General of the State of Louisiana, and the function of the District Attorney of Iberville Parish, Louisiana, in respect thereto, has been of a mechanical nature only, in that he was perfunctorily requested to affix his signature to said documents, regardless

of their nature and purpose; that said state officials have knowingly suppressed evidence in their possession favorable to defense in said cases.

7.

Because of the vicious nature and widespread circulation of the ignominiously scandalous propaganda generated by state officials, including Governor John J. McKeithen, against your movant and the other persons accused as herein aforesaid, said accused persons have become the object of ridicule and condemnation by the general public; furthermore, movant alleges that the coercive influence exerted by the state officials as herein aforesaid has been so consummate, so overwhelming that movant and those other persons accused as herein aforesaid have been denied of the rudiments of the due process and equal protection, and movant believes that this condition of undue influence exists and will continue to exist indefinitely into the future and that it is impossible for that reason for movant and those similarly charged to receive a fair and impartial trial in Iberville Parish, Louisiana; that therefore venue for the captioned prosecution should be changed to a parish in the State of Louisiana where an atmosphere of neutrality and an attitude of justice and fair play may prevail.

Wherefore movant prays that a hearing be had on his motion for change of venue; that he be accorded the compulsory processes of this Court, and that after due hearing the venue for the captioned prosecution be ordered changed to a parish in the State of Louisiana where movant will be assured of a fair and impartial trial.

/s/ J. MINOS SIMON

J. MINOS SIMON
Attorney for Movant"

Prior thereto relator Jerry Sylvester through other counsel also filed a motion for a change of venue.

On Saturday, September 28, 1968, at 7:30 A.M., relator Jackson's undersigned counsel was served with the following communication, to-wit:

September 27, 1968

"To:
Mr. J. Minos Simon
Attorney at Law
1408 Pinhook Road
Lafayette, Louisiana

Mr. William C. Bradley
Attorney at Law
P. O. Box 475
Baker, Louisiana

Re:
State of Louisiana
Vs. No. 10,270
Stanley H. Jackson

State of Louisiana
Vs. Nos. 10-201-10,204 incl.
Emmett Tucker

State of Louisiana
Vs. Nos. 10,205-10,208 incl.
Gene C. Fontenot

State of Louisiana
Vs. Nos. 10,209-10,212 incl.
Billy W. Dardeau

State of Louisiana
Vs. Nos. 10,213-10,216 incl.
Byron B. Vidrine

State of Louisiana
Vs. Nos. 9840-9843 incl.
Roderick Jenkins

State of Louisiana
Vs. Nos. 10,179, 10,183,
10,187, 10,190
Hugh Marionneaux

State of Louisiana
Vs. Nos. 10,180, 10,184,
10,188, 10,192
Emery C. Hendrick

State of Louisiana
Vs. Nos. 10,181, 10,185,
10,189, 10, 193
Lloyd W. Kinchen

State of Louisiana
Vs. Nos. 9752-9755 incl.
Edgar Coleman

State of Louisian
Vs. Nos. 9752-9755 incl.
10,314-10,317 incl.
Terry George

State of Louisiana
Vs. Nos. 10,178, 10,182,
10,186, 10,191
Alton Holden

State of Louisiana
Vs. Nos. 9752-9755 incl.
10,314-10,317 incl.
Jerry Kinchen

State of Louisiana
Vs. Nos. 9752-9755 incl.
9756-9758 incl., 9961 &
10,012
Wade McClanahan
10,314-10-317 incl.

State of Louisiana
Vs. Nos. 9752-9755 incl.
10,314-10,317 incl.
Tommy Craig

State of Louisiana
Vs. Nos. 9752-9755 incl.
Jerry Sylvester 10,314-
10,317 inclusive

Gentlemen:

YOU ARE HEREBY NOTIFIED that the motions in the above numbered and entitled cases have been set for hearing on Monday, September 30, 1968, at 9:00 o'clock A.M.

Yours very truly,

/s/ JOSIE LIBERTO

JOSIE LIBERTO
Dy. Clerk of Court"

On Monday, September 30, 1968, approximately five minutes before court opened while in the courtroom of the Eighteenth Judicial Court in and for the Parish of Iberville, State of Louisiana, relators' counsel was given a copy of the following motion for change of venue filed on behalf of the State of Louisiana by Kenneth Scullin, Assistant Attorney General of the State of Louisiana, which motion, identical in nature as to both relators, reads as follows:

"STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

EIGHTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERVILLE
STATE OF LOUISIANA

Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270, and 10,271

MOTION FOR CHANGE OF VENUE

Now into court, through undersigned counsel, comes the State of Louisiana, and with respect represents that:

1.

A motion for change of venue was filed by the accused in Criminal Action Number 10,270 on the docket of this Honorable Court to which the State has no objection, although in no way does the State admit to the facts alleged by the accused.

2.

Inasmuch as Criminal Action Number 10,270 is one of seventeen (17) related charges against the accused, the State desires to have a change of venue in each action, being in addition to Criminal Action Number 10,270, also Criminal Action Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,271.

3.

This application is not made for purposes of delay, but is made to obtain a fair trial in an impartial atmosphere for both the State and the accused.

Wherefore, the State of Louisiana prays that this motion be granted and Criminal Action Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271 be transferred to another parish.

JACK P. F. GREMILLION,
Attorney General
State of Louisiana

KENNETH C. SCULLIN,
Assistant Attorney General
State of Louisiana

SAMUEL CASHIO,
District Attorney
18th Judicial District
State of Louisiana

/s/ KENNETH C. SCULLIN"

"STATE OF LOUISIANA

VERSUS

WADE McCLANAHAN, EDGAR COLEMAN,
TERRY GEORGE, JERRY KINCHEN,
TOMMY CRAIG, JERRY SYLVESTER

EIGHTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERVILLE
STATE OF LOUISIANA

Criminal Action Numbers 9752, 9753, 9754, 9755,
10,314, 10,315, 10,316 and 10,317

MOTION FOR CHANGE OF VENUE

Now into court, through undersigned counsel, comes the State of Louisiana, and with respect represents that:

1.

A motion for change of venue was filed by the various accused in Criminal Action Numbers 9752, 9753, 9754 and 9755 on the docket of this Honorable Court to which the State has no objection, although in no way does the State admit to the facts alleged by the various accused.

2.

Inasmuch as Criminal Action Numbers 9752, 9753, 9754, and 9755 are related to Criminal Action Numbers 10,314, 10,315, 10,316, and 10,317 and do in fact result from one criminal transaction, the State desires a change of venue in the four (4) latter criminal actions.

3.

This application is not made for purposes of delay, but is made to obtain a fair trial in an impartial atmosphere for both the State and the various accused.

Wherefore, the State of Louisiana prays that this motion be granted and Criminal Action Numbers 9752, 9753, 9754, 9755, 10,314, 10,315, 10,316 and 10,317 be transferred to another parish.

JACK P. F. GREMILLION
Attorney General
Baton Rouge, Louisiana

KENNETH C. SCULLIN
Assistant Attorney General
State of Louisiana

SAMUEL CASHIO
District Attorney
18th Judicial District
State of Louisiana

/s/ KENNETH C. SCULLIN"

Immediately upon the opening of court respondent Judge Kimball entertained the motion filed on behalf of the State of Louisiana, which utterly fails to state any cause whatever for a change of venue, and without the opportunity of conducting any hearing as to that motion or as to relators' motions for change of venue, and over the objection of relators' counsel, said respondent judge ordered all of these criminal prosecutions to be transferred to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana; this action was taken despite the protest of relators herein that there was no basis whatever for such an order and that the distance of the First Judicial District Court from the domicile of your relators herein was so prohibitively great as to constitute an intolerable hardship on relators.

On or about October 4, 1968, relators were informed that prior to September 30, 1968, and more particularly on or about September 26, 1968, the Attorney General

of Louisiana individually and/or by and through his assistants, who have taken over completely these district court prosecutions, decided and declared the intention to have all of these criminal prosecutions transferred to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana, the domicile of Harry A. Roberts, former chief investigator for the Labor-Management Commission of Inquiry of the State of Louisiana, the officers and agents of which have been instrumental in initiating these criminal prosecutions, for the purpose of obtaining a trial of these criminal prosecutions in an anti-labor union atmosphere and of inflicting as much hardship and inconvenience as possible against your relators; your relators further believe that after said decision was reached and prior to September 30, 1968, said respondent Judge Kimball extrajudicially agreed to transfer said criminal prosecutions to the aforesaid First Judicial District in fulfillment of the wishes of the officials of the Attorney General's Office of the State of Louisiana.

Upon being so informed relator Stanley H. Jackson prepared and submitted to Judge G. Ross Kearney on October 9, 1968, the following motion to recall the change of venue order of September 30, 1968, to-wit:

"STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

EIGHTEENTH JUDICIAL DISTRICT COURT
PARISH OF IBERVILLE, LOUISIANA

Numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,265, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271

MOTION TO RECALL THE ORDER OF THE COURT OF SEPTEMBER 30, 1968, RELATIVE TO CHANGE OF VENUE

Stanley H. Jackson, appearing through counsel, for cause to recall the order of this court of September 30, 1968, whereby venue in the captioned proceeding was changed to the First Judicial District Court, Parish of Caddo, State of Louisiana, respectfully represents that:

1.

Movant is informed, believes and therefore states that the change of venue order complained of herein was determined and dictated to the court by the Attorney General and his assistants, who have supplanted the District Attorney of Iberville Parish, Louisiana, in an effort to appease the principal prosecution witness, W. O. Bergeron, and that the order changing said venue to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana, was the product of collusion between the presiding Judge, Daniel P. Kimball, and the Attorney General and his assistants, to the grave prejudice of your movant herein, including the denial to your movant of equal and impartial justice.

2.

Movant further alleges that the selection of the First Judicial District Court for the Parish of Caddo as the venue to which this litigation should be changed is arbitrary and capricious; furthermore it visits upon your movant an undue hardship in that it requires your movant to travel the distance between Plaquemine, Louisiana, his domicile, and Shreveport, Louisiana, the domicile of said court for

said trial which entails the traveling of a distance of approximately 400 miles; that the order for the said change of venue to Shreveport, Louisiana, as herein aforesaid, is wholly unjustified in that presiding Judge Daniel Kimball conducted no hearing whatsoever, and said order is based upon no evidence justifying the same.

3.

Said order is an absolute nullity for the reason that said Judge Kimball refused to conduct any hearing to determine first the cause for the removal and, second, in the event good cause is shown by the evidence, the acceptability, desirability and convenience of the court to which the venue may be changed; therefore said order should be ordered recalled and a hearing on movant's motion for change of venue should be conducted pursuant to the requirements of the laws of the State of Louisiana.

4.

Movant further alleges that the motion for change of venue filed by the State of Louisiana as to criminal actions numbers 10,255, 10,256, 10,257, 10,258, 10,259, 10,260, 10,261, 10,262, 10,263, 10,264, 10,266, 10,267, 10,268, 10,269, 10,270 and 10,271 is legally insufficient to sustain the order changing the venue for the prosecution of said causes. As shown by said motion the State fails to allege any facts whatever in support of its claim for change of venue as to these criminal prosecutions. In fact the State disavows the factual predicate of your movant's motion for change of venue as to criminal action number 10,270; therefore as a matter of law said motion for change of venue does not state a cause for a change of venue; furthermore no hearing was had as to said motion for change of venue; the order of the court effecting a change of venue to the

First Judicial District Court of Louisiana therefore is an absolute nullity.

5.

Movant further alleges that for the reasons set forth in his application to recuse Judge Daniel Kimball, and for the reasons of collusive action set forth herein, said Judge Daniel Kimball should not be permitted to hear this motion.

6.

The State of Louisiana, acting through the Attorney General, procured the change of venue to the District Court in Shreveport, Louisiana, solely for the purpose of inconveniencing and harassing movant and the other defendants and members of Teamsters Local Union No. 5; prior to said change of venue order said Attorney General had caused summons to issue to defendants to appear before the District Attorney of Iberville Parish, Louisiana, and also caused such summons to issue to other persons who are members of said union and who are otherwise related to members thereof, and secured an order for said appearance from Judge Kimball ostensibly for the purpose of further investigating matters relating to the captioned criminal prosecutions; movant alleges that since the issuance of the order purporting to change said venue to Shreveport, Louisiana, said Attorney General has similarly caused to be issued summons for defendants and other members of Teamsters Local Union No. 5, as well as the wife of defendant Stanley H. Jackson, to appear before the District Attorney of the First Judicial District in Shreveport, Louisiana.

7.

Movant alleges that said summons are being issued in bad faith and solely for the purpose of

harassing the defendants and others mentioned and to inflict upon them gross inconveniences and hardship; no provision is made to defray the expenses of these persons so summoned to travel the distance of over 800 miles to and from Shreveport or to defray the expenses of hotel accommodations and eating; these persons are compelled to attend in response to said summons or face contempt citation for failure to do so and thus must experience an outlay of cash for the expense of attending in response to said subpoena without any recourse for reimbursement; in order to avoid such harsh hardship it is necessary that the order effecting a change of venue to the First Judicial District rendered on September 30, 1968, be suspended until a hearing on this motion to recall may be had.

WHEREFORE MOVANT PRAYS that the order of this Honorable Court of September 30, 1968, be ordered suspended until a hearing may be had on the motion to recall.

MOVANT FURTHER PRAYS that a hearing on the motion to recall be granted and that the State of Louisiana be ordered to show cause on a date to be fixed by this court why the order of this court of September 30, 1968, effectiing a change of venue as to all of the criminal actions mentioned in the title hereof to the First Judicial District Court, Parish of Caddo, State of Louisiana, should not be recalled and set aside; that furthermore a hearing be had on movant's original motion for change of venue and after due hearing that a change of venue be granted and the venue be changed to a district court more conveniently located and ap-

propriate to the exigencies of this case and consonant with the due administration of justice.

/s/ J. MINOS SIMON
Attorney for Movant"

ORDER

Considering the foregoing motion:

IT IS ORDERED that the order of the court of September 30, 1968, effecting a change of venue to the First Judicial District Court of Caddo Parish, Louisiana, be and the same hereby is suspended until a final hearing may be had on the foregoing motion.

IT IS FURTHER ORDERED that a rule nisi do issue directed to the State of Louisiana, by and through Honorable Sam Cashio, District Attorney in and for the Parish of Iberville, State of Louisiana, commanding him to show cause on the ..... day of ....., 1968, why the order of the court on September 30, 1968, should not be recalled and a hearing be granted on Stanley H. Jackson's application for a change of venue and that after such hearing venue for the prosecution of the captioned cases be changed to a district court more conveniently located and apropriate to the exigencies of this case and consonant with the due administration of justice.

OFFICIALLY GRANTED on this ..... day of October, 1968, at ....., Louisiana.

District Judge

An identical motion was prepared and presented on behalf of relator Jerry Sylvester.

Said motions were presented to Judge Kearney at the Courthouse of the Eighteenth Judicial District Court in and for the Parish of West Baton Rouge, Port Allen, Louisiana; upon being presented with said motion said Judge Kearney advised undersigned counsel that he would have to confer with respondent Judge Kimball, who then was also at said courthouse building; after a brief conference with Judge Kimball said respondent Judge Kearney advised undersigned counsel that he would not sign the accompanying order and would take no action on said motion inscribing on said motion, "I decline to sign the above motion".

Relators aver that said application to recall was not presented to respondent Judge Kimball, though he was consulted as to it by Judge Kearney as herein afeoresaid, because relators verily believed and continue to believe that said Judge Kimball is biased, prejudiced and personally interested in the captioned criminal prosecution to such an extent that he is unable to conduct a fair and impartial trial or to fairly and justly consider any judicial matters concerning relators' criminal prosecutions, and because of that belief said relators filed simultaneously with the recall motion, the following motion to recuse the said Judge Kimball, as to which no action was taken, to-wit:

"STATE OF LOUISIANA

VERSUS

STANLEY H. JACKSON

EIGHTEENTH JUDICIAL DISTRICT COURT

Numbers 10,255, et al.

PARISH OF IBERVILLE, LOUISIANA

MOTION TO RECUSE

Stanley H. Jackson, appearing through counsel, for cause to recuse Honorable Daniel P. Kimball, Judge, Eighteenth Judicial District, Parish of Iberville, Louisiana, respectfully represents that:

1.

Daniel P. Kimball, Judge of the Eighteenth Judicial District Court in and for the Parish of Iberville, State of Louisiana, is biased, prejudiced and personally interested in the captioned criminal prosecution to such an extent that he would be unable to conduct a fair and impartial trial and therefore should be recused.

2.

More particularly movant alleges that the said Judge Kimball is functioning under the threat of ouster from office made and communicated to him and other public officials by John J. McKeithen, Governor of the State of Louisiana; the captioned prosecution is part and parcel of a plan on the part of the Governor of the State of Louisiana to prosecute members of Teamsters Local Union No. 5 and any persons identified with them, including your movant, without regard to the guilt or innocence of such persons; that said Governor McKeithen has vowed to oust from public office any public official, including Judge Kimball, who showed the slightest reluctance, for any reason, in connection with the

prosecution of such persons; that the said Judge Kimball therefore is unable to conduct a fair and impartial trial if for no reason other than the coercive influence of the said Governor McKeithen.

3.

Furthermore movant alleges that said Judge Kimball heretofore has intentionally denied your movant of constitutional due process and equal protection secured to him by the Constitution of the United States and the Constitutition of the State of Louisiana and has otherwise demonstrated a bias and prejudice against your movant.

4.

More particularly movant alleges that on August 22, 1968, said Judge Kimball caused certain parish officials to telephone your movant to advise him that he, the said Judge Kimball, desired to talk to your movant; at the time in question your movant was engaged in his employment, the only means by which he sustains himself and his family; movant alleges that he was unable to respond to this request to go have an audience with Judge Kimball; when your movant failed to respond, said Judge Kimball, without any authority in law whatever but solely in an exhibition of his personal bias, ordered the issuance of a bench warrant and caused your movant to be arrested and taken from his place of employment and brought to his chambers in the District Courthouse Building at Plaquemine, Louisiana, and there engaged your movant in a discussion concerning whether or not your movant was an indigent defendant sufficient to warrant the appointment of counsel to defend him; at that time however that issue had already been resolved by the court in Open Court for some weeks previous and said Judge Kimball had already appointed counsel to represent your movant; said action of said Judge

Kimball simply exemplifies his personal distate and bias against your movant and his inability to act fairly and impartially as to your movant in or out of court.

5.

Furthermore movant alleges that on September 13, 1968, during the course of a hearing relative to the charges filed against your movant, movant's counsel objected to certain rulings of Judge Kimball, reserved a Bill of Exception in respect thereto and sought to establish the factual basis of his said Bill of Exception, all in keeping with the provisions of Articles 843, et seq., of the Louisiana Code of Criminal Procedure; said Judge Kimball however arbitrarily and capriciously refused to permit your movant to establish the factual basis of his Bill of Exception; that the effect of such conduct is to deny movant of the right to present the facts upon which his objection is based and thus of the right to permit an effective review on appeal of the rulings of said Judge Kimball.

6.

Moreover movant alleges that said Judge Kimball refused to permit the court reporter to supply to your movant without charge a transcript of the Bills of Exceptions which he had reserved during the course of said hearing, despite the provisions of state law to the effect that your movant unconditionally was entitled to such a transcript.

7.

Movant alleges that again on September 23, 1968, said Judge Kimball took a similar course of action and refused to permit movant to establish the factual basis of his Bills of Exceptions reserved to rulings made by Judge Kimball and objected to by movant.

8.

Movant further alleges that said Judge Kimball's conduct in all of the other criminal prosecutions allied to the general plan of discriminatory criminal prosecution herein aforesaid has been of a similar nature; notably among the incidences reflecting his biased course of conduct is his arbitrary act in connection with the matter of *State of Louisiana v. Jerry Sylvester,* bearing criminal docket numbers 9752, 9753, 9754, 9755, 9760, 9761, 9762, 9763, being one of the cases involved in the aforesaid plan, where said District Judge acting extrajudicially and beyond his jurisdiction, instructed the Clerk of Court of the Eighteenth Judicial District, Parish of Iberville, State of Louisiana, to refuse to cause requested subpoenas to issue for the appearance of witnesses on behalf of said defendant needed in connection with a hearing to be conducted by said Judge Kimball assigned by him on a date certain; that on the assigned date of said hearing, witnesses of the said Sylvester were not made to appear and he was without witnesses to substantiate his position in respect to said hearing; thus he was denied of constitutional due process, namely the compulsory processes of witnesses as a result of the arbitrary and capricious prejudicial acts of the said Judge Kimball; that said Judge Kimball is so biased and prejudiced against movant and those similarly situted as to make it impossible for him to conduct a fair and impartial trial and therefore he should be recused.

9.

Movant further alleges that on September 30, 1968, the trial of the action of *State of Louisiana v. Stanley H. Jackson,* number 10,270, was scheduled to commence; movant, acting through counsel, requested the issuance of subpoenas for said trial; on arriving in court however on September 30, 1968,

neither the jurors scheduled to appear for said trial nor the witnesses whose presence was requested by movant were present; said subpoenas had been cancelled at the instruction of said Judge Kimball according to your movant's information and the trial of his case had arbitrarily been set aside and the jurors instructed not to appear.

10.

Furthermore on said date there was scheduled for hearing movant's motion for change of venue; said respondent Judge refused to conduct any hearing in respect thereto but granted said motion and ordered the venue to be changed to the First Judicial District Court, Parish of Caddo, State of Louisiana, some 400 miles from the domicile of your movant.

11.

Furthermore said Judge Kimball entertained a motion to change venue filed by the State of Louisiana and acted thereupon and ordered the venue changed as to all of the pending cases against your movant herein; where said application is wholly insufficient in law to justify any action whatever and furthermore without conducting any hearing in respect thereto.

12.

Movant further alleges that according to his information the change of venue order of September 30, 1968, was determined and dictated to the court by the Attorney General and his assistants, who have supplanted the District Attorney of Iberville Parish, Louisiana, in an effort to appease the principal prosecution witness, W. O. Bergeron, and that the order changing said venue to the First Judicial District Court in and for the Parish of Caddo, State of Louisiana, was the product of collusion between

the presiding judge, Daniel P. Kimball, and the Attorney General and his assistants, to the grave prejudice of your movant herein including the denial to your movant of equal and impartial justice.

WHEREFORE MOVANT PRAYS that after due hearing had on this motion, the same be granted and that Judge Daniel P. Kimball be ordered recused from functioning as judge in connection with any prosecution against your movant.

/s/ J. MINOS SIMON
Attorney for Movant"

An identical motion to recuse Judge Kimball was filed by relator Sylvester.

During the pendency of these criminal proceedings and of similar criminal proceedings, some of which are enumerated in the notice of hearing served on undersigned counsel on Saturday, September 26, 1968, at 7:30 A.M., the Attorney General, acting individually and/or through his assistants, abusively invoked the provisions of Article 66 and caused summons to issue to those accused of crime as well as to others to appear at the office of the District Attorney of the Eighteenth Judicial District, Parish of Iberville, State of Louisiana, for the purpose of being interrogated concerning what was described as a matter under investigation; upon their arrival at the office of the said District Attorney, said individuals were confronted by assistants of the Attorney General of the State of Louisiana who had no authority whatsoever to function under the auspices of the provisions of said Article in the Code of Criminal Pro-

cedure; that the Attorney General and his assistants invoked the provisions of said Article of the Louisiana Code of Criminal Procedure solely for the purpose of harassing and inconveniencing these defendants.

Relators aver that the Attorney General and his assistants have again renewed their harassing actions inasmuch as already they have caused similar summons to issue from the First Judicial District Court in and for the Parish of Caddo, State of Louisiana; among those thus far served with such summons is relator Jackson's wife; she has been ordered to appear before the office of the District Attorney of Caddo Parish, Louisiana, on October 10, 1968; should she fail to appear, under the plan provisions of Article 66 of the Code of Criminal Procedure, she could be adjudged in contempt of court and sentenced to imprisonment; said state officials are knowingly attempting to compel relator Jackson's wife to testify against relator Jackson or else to incur the expense and hardship of travelling a distance in excess of 800 miles just for the purpose of fulfilling the whimsical desires of said state officials.

Relators furthermore are being denied of the right to be supplied with a transcript of their bills of exceptions and evidence in connection therewith; on October 3, 1968, relators' counsel sent the following telegram to the appointed court reporter, to-wit:

October 3, 1968

"Mrs. Janet L. Parker.
Janet Parker & Associates
Baton Rouge Savings & Loan Bldg.
Baton Rouge, Louisiana

Re: State v. Stanley Jackson and Jerry Sylvester.

I need immediately transcripts of Bills of Exceptions concerning September 23, 1968, hearing.

/s/ J. MINOS SIMON"

and received the following written response from Mrs. Parker, to-wit:

4 October, 1968

"J. Minos Simon
1408 Pinhook Road
Lafayette, Louisiana 70501

Re: State v. Stanley Jackson and Jerry Sylvester.

Dear Mr. Simon:

We are in receipt of your wire of 3 October, 1968, re transcript of bills of exception taken in the above-captioned matter on 23 September, 1968.

Since these matters are no longer in the hands of the officials of Iberville Parish, once more we are faced with the problem of to whom to look for payment once the transcript is completed. Do you pay for it? Does the Iberville Parish Police Jury pay for it? Or is it paid for by Caddo Parish? Since this transcript will run approximately 120 to 130 pages at a cost of $1.50 each, the total bill will be in the neighborhood of $200. When you have gotten an order from someone who is to be responsible for this payment, we will be happy to proceed with same, but since we are free-lance reporters and not paid a salary by anyone, it is most necessary that we have this matter straightened out before embarking on a job of this magnitude.

Thanking you for your attention to this matter, we are,

Yours very truly,

JANET L. PARKER & ASSOCIATES

/s/ MRS. JANET L. PARKER

cc: Honorable Theresa Delacroix, Clerk of Court
Parish of Iberville, Plaquemine, Louisiana"

Such a refusal constitutes a denial of constitutional due process and equal protection.

QUESTIONS OF LAW PRESENTED

Can a district court judge grant a change of venue without a hearing? That essentially is the primary question presented by this application. If so, by what authority and under what circumstances? Does the failure of the State to resist a defendant's motion for change of venue supply the proof required in such instances? Stated otherwise, is a district court judge authorized to surrender the jurisdiction of the district court, without hearing any evidence, where the State does not oppose a defendant's motion for change of venue?

Can a change of venue be granted on the motion of the State, where no factual allegation of cause is pled?

Does a hearing on a change of venue motion contemplate both (a) the question of the cause for such a change and (b) the question of the selection of another appropriate venue to which the case may be assigned? Can a trial judge willy-nilly select a venue without giving an opportunity to the complaining party of producing evidence as to the reasonableness of the selection?

Can a district judge legally refuse to take official action on a recall motion, where it is alleged that the change of venue order sought to be recalled was the product of collusion between the presiding judge and the prosecuting attorney and was obtained without a hearing?

How can a defendant in a criminal case challenge the

undue hardship question created by a change of venue order other than at the hearing for change of venue, and when such a hearing is arbitrarily denied, then by way of a motion to recall filed in the same court? Is not such a hardship question moot after trial? Can such a hardship question ever constitute a basis for a motion in arrest of judgment or for a reversal of a guilty verdict? Where hardship in a criminal prosecution involves, among other things, an inordinate expenditure of funds to defray traveling and lodging expenses occasioned by a change of venue order, and where such hardship is inflicted on a defendant without a hearing as to the availability of a judicial forum more conveniently located, the selection of which would practically eliminate the hardship, is not such a defendant denied of his property rights without due process of law?

Is it not patently a gross abuse of discretion, requiring instant reversal, for a trial judge to transfer a trial to another court, the situs of which is in excess of 800 miles to and from a defendant's domicile, where he conducts no hearing and receives no evidence to determine the legal availability of a judicial forum more conveniently located?

ASSIGNMENT OF ERROR

1. It was error for respondent Judge Kimball to have ordered a change of venue without a hearing and for respondent Judge Kearney to have refused to conduct a hearing as to relators' motion to recall said order.

ARGUMENT

The essential legal question before the court is as elementary as the error complained of is fundamental.

Under the plain provisions of Article 622 of the Code of Criminal Procedure a defendant is entitled to a hearing on his motion for a change of venue. Article 622 reads as follows:

> "A change of venue shall be granted when the applicant *proves* that by reason of prejudice existing in the public mind or because of undue influence, or that for any other reason, a fair and impartial trial cannot be obtained in the parish where the prosecution is pending.
>
> In deciding whether to grant a change of venue the court shall consider whether the prejudice, the influence, or the other reasons are such that they will affect the answers of jurors on the voir dire examination or the testimony of witnesses at the trial."

By the clear provisions of this Article it is self-evident that no change of venue can be granted without proof that there exists the prejudice contemplated by the law. Absent such proof there can be no change of venue.

With the adoption of Article 623 of the Code of Criminal Procedure the question of prejudice contemplated by Article 622 is not limited to the territorial confines of the parish in which the court is sitting. It extends to any other parish to which the case might be transferred. Prior to the adoption of Article 623, by virtue of the provisions of Article 293 of the 1928 Code of Criminal Procedure when the change of venue was granted the transfer had to be to "an adjoining parish of the same judicial district or to a parish of an adjoining district". Thus the discretion of the trial judge as to the selection of the court to which the case might be transferred was somewhat stringently circumscribed. This is no longer the case. Article 623 authorizes a trial judge to transfer

a case to any parish in the State. The primary consideration and purpose of such a hearing is to insure an accused of a fair and impartial trial, not only in the parish where venue originates, but also in the parish to which the case may be transferred. No judge is presumed to have the clairvoyance to make a determination as to either without a hearing of the evidence. Such a hearing can be conducted by no court other than the one of original venue. The court to which a case is transferred is without authority to gainsay or challenge the validity of the order of transfer. *State v. Morgan,* 147 La. 205, 84 So. 589; *State v. Mejia,* 250 La. 518, 197 So.2d 73.

To say that relators got what they wanted, because they filed a motion for change of venue, and therefore cannot be heard to complain is to gloss over the essence of the issue presented. Relators sought but were denied a *hearing* as to their claim for a change of venue. At such a hearing they had the unquestioned right to introduce evidence to establish the nature of the prejudice complained of and simultaneously to establish the outer limits of its territorial expanse. If similar prejudice as that claimed in their motion for change of venue exists in the First Judicial District at Caddo Parish, Louisiana, relators had the undisputed constitutional right to produce evidence thereof at the hearing on their motion for change of venue. Moreover, while the court of original venue has the power to change it on receiving due proof justifying such action to another parish of the state, such a trial judge is not thereby invested with unlimited power to willy-nilly select any parish in the state as the judicial forum to which he may assign the trial of the case. Considerations of oppressive costs and inconvenience par-

ticularly to the defendant are vitally at issue. Such factors alone may be of such a nature as to unduly impair a defendant in his defense to criminal prosecution.

The refusal of Judge Kimball to conduct a hearing is contrary to the express provisions of state law and to the well-established jurisprudence of Louisiana. The refusal of respondent Judge Kearney to conduct a hearing as to relators' application to recall the order changing the venue is likewise contrary to state law. *State, ex rel., Williams v. Gray,* 109 La. 127, 33 So. 108.

The precise question presented already has been decided by this court since 1893 in the case of *Bruillette, et al. v. Judge of Tenth Judicial District Court for Parish of Avoyelles,* 45 La.Ann. 243, 12 So. 134. In granting the supervisory writs applied for as to the validity of the change of venue order this court said: (12 So. at P. 134)

> " * * * where the issue is as to the validity of a change of venue, where relators are forced to meet a trial in a parish other than that of their domicile, and where the state is exposed to the labor and expense of a trial which will prove fruitless, the interest of justice will be promoted by an immediate determination of the question presented, in order that irregular proceedings may be corrected and legal ones substituted therefor."

The factual issues are described by the court in these words: (12 So. at P. 134)

> " * * * It appears that at a sitting of the court out of term, and immediately after the filing of informations against the relators, and after they have voluntarily waived arraignment and entered their pleas of not-guilty, the district attorney presented a motion for a change of venue on the ground that the state of public sentiment in the

> parish was such that a fair and impartial trial could not be had, which motion was accompanied by his affidavit to the facts stated. The judge, *without hearing any evidence,* immediately granted the order, and, notwithstanding the relators, by counsel, objected thereto, maintained the same, reserving counsel's right to embody the objections in a bill of exception, which was accordingly done."

The statute then under consideration by the court is comparable in its demands and sanctions to the provisions of Article 622 involved in the instant application. In part pertinent it provided: "That whenever it shall be established, in any criminal prosecution, *by legal and sufficient evidence,* that a fair and impartial trial cannot be had in the parish where the case is pending, the judge of any court having jurisdiction of the case may, upon application of the Attorney General, District Attorney, or District Attorney pro tempore for a change of venue, grant such application." In reversing the change of venue order this court held; (12 So. at P. 135)

> "The statute so obviously contemplates a trial of the issue on evidence to be adduced, including the right of accused to cross-examine the witnesses of the State, and also, if so desired, to produce witnesses in their own behalf, that we are bound to conclude that the learned judge must have inadvertently overlooked its existence. The mere affidavit of the district attorney, attached to the motion, is cerainly not the 'legal and sufficient evidence' required by the statute; nor is the judge's own personal knowledge of the sentiment of the community sufficient. He could act only on 'legal and sufficient evidence' and not upon the mere opinions of the district attorney or of himself, however conscientious and even well-founded they may be."

This is the identical situation presented in the instant

case, with the exception that there is no evidence to indicate that respondent Judge Kimball acted out of consideration of the opinions of the District Attorney as to the existence of improper prejudice in Iberville Parish, Louisiana. On the contrary under the express allegations of the motion to recall, it is set forth that the selection of the First Judicial District, Parish of Caddo, State of Louisiana, was made and insisted upon by the prosecuting attorney and concurred in by respondent Judge Kimball before the matter was ever presented to the court. For these reasons therefore the remedial writs applied for should be granted forthwith.

Relators further represent to the court that they continue to be denied of a transcript of their bills of exception. The district court, functioning through respondent Judge Kimball, continues to refuse to supply them with a transcript of their bills of exception. The latest excuse for this failure is the apprehension of the court-appointed reporter that she may not be compensated for her effort. Respondent Judge Kimball is knowingly indulging this refusal despite the unambiguous holding of this court as to that question in the case of *State of Louisiana v. Mejia*, supra.

WHEREFORE RELATORS PRAY that writs of certiorari, mandamus and prohibition forthwith issue herein as provided for by law and accordingly,

(a) Honorables Daniel H. Kimball, R. Ross Kearney, William J. Fleniken, John A. Dixon, Jr., Henry F. Turner, William F. Woods, James R. Alexander, Samuel C. Cashio, John A. Richardson, and Jack P. F. Gremillion be forthwith enjoined and prohibited from taking any action whatsoever in connection with the criminal prosecutions herein mentioned;

(b) That respondent Judge G. Ross Kearney be commanded forthwith to conduct a hearing as to relators' application for a recall of the change of venue order of September 30, 1968, and as to relators' motion to recuse respondent Judge Daniel H. Kimball;

(c) That respondent Judges Kearney and Kimball forthwith be ordered to forward the record of this cause to this Honorable Court for its review.

In the alternative relators pray that alternative writs of certiorari, mandamus and prohibition issue and that all of the respondents herein be ordered to show cause on date to be designated by this Honorable Court why said writs of certiorari, mandamus and prohibition should not issue as prayed for, and why furthermore relators should not be provided forthwith with a transcript of all bills of exceptions reserved and evidence and proffers of evidence made in connection therewith.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Lafayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Relators

STATE OF LOUISIANA
PARISH OF LAFAYETTE

J. MINOS SIMON, being first duly sworn, did depose and say that he is counsel in the foregoing application for writs of certiorari, mandamus and prohibition; that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

Affiant further states that a copy of the foregoing application was forwarded to and served upon each of the following individuals by mailing the same in a properly addressed envelope, postage prepaid, to-wit:

Honorable Daniel H. Kimball
Judge, 18th Judicial District
Parish of Iberville
Plaquemine, Louisiana

Honorable G. Ross Kearney
Judge, 18th Judicial District
Parish of Iberville
Plaquemine, Louisiana

Honorable Henry F. Turner
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable William F. Woods
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable William J. Fleniken
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable John A. Dixon, Jr.
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable James R. Alexander
Judge, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable Samuel C. Cashio
District Attorney, 18th Judicial District
Parish of Iberville
Plaquemine, Louisiana

Honorable John A. Richardson
District Attorney, 1st Judicial District
Parish of Caddo
Shreveport, Louisiana

Honorable Jack P. F. Gremillion
Attorney General of State of Louisiana
State Capitol
Baton Rouge, Louisiana

Further affiant sayeth not.

/s/ J. MINOS SIMON

J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 10th day of October, 1968, at Lafayette, Louisiana.

(Signature Not Legible)

Notary Public

APPENDIX D-4

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

October 11, 1968

NO. 49,523

STATE OF LOUISIANA

vs.

STANLEY H. JACKSON and JERRY SYLVESTER

In re: Stanley H. Jackson and Jerry Sylvester applying for writs of certiorari, mandamus and prohibition.

Writs refused.

Relators have made no showing which would warrant the exercise of our supervisory jurisdiction. Furthermore, they have an adequate remedy by appeal in the event of their conviction.

/s/ EHMcC
/s/ JBF
/s/ JBH
/s/ WBH
/s/ FWS
/s/ JWS
/s/ MEB

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
October 11, 1968

(Signature Not Legible)

Deputy Clerk

APPENDIX E-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CIVIL ACTION NO. 68-177

STANLEY H. JACKSON

VERSUS

JACK P. F. GREMILLION,
KENNETH SCULLIN and
BARRY MARIONNEAUX

ORIGINAL COMPLAINT

1.

JURISDICTION

(a) The jurisdiction of this court is invoked under Title 28, United States Code, Section 1331, this being a civil action in equity that arises under the Constitution and laws of the United States, and Title 42, United State Code, Sections 1981, 1983 and 1988, this being an action in which a citizen of the United States contends that he has been, is now and threatens to continue to be denied of rights, privileges and immunities secured to him by the Constitution of the United States and of the full and equal benefits and protection of pertinent laws of the State of Louisiana, and thus, is deprived of his legal rights as a citizen of the State of Louisiana and of the United States contrary to the Constitution and laws of the United States.

(b) The jurisdiction of this court is further invoked under Title 28, United States Code, Section 1343 (3) (4), this being an action for the redress of the deprivation, under color of law, of rights, privileges and immunities secured to complainant as a citizen of the United States by the Constitution and laws of the United States.

2.

FACTS

(1) The State of Louisiana, appearing through Jack P. F. Gremillion, Attorney General of the State of Louisiana, and his agents and assistants, including Kenneth Scullin and Barry Marionneaux, has filed seventeen Bills of Information against your petitioner, Stanley H. Jackson, charging him with the offense of public bribery, a crime punishable by the laws of the State of Louisiana with maximum imprisonment of five years and a fine of One Thousand ($1,000) Dollars; said Bills of Information were filed in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, and docketed as *State of Louisiana v. Stanley H. Jackson*, bearing criminal actions numbers 10,255 through 10,271; while said Bills of Information are filed in the name of the District Attorney for said state judicial district, in truth and in fact they were filed and prepared by the Attorney General of the State of Louisiana and all prosecutive steps in connection therewith are under the complete control of said Attorney General of the State of Louisiana, the District Attorney aforesaid having been wholly displaced by said Attorney General.

(2) As to fifteen of said seventeen criminal charges

petitioner is charged with public bribery "by accepting or offering to accept directly and indirectly the sum of One Hundred and Fifty ($150.00) Dollars in United States currency from one T. Frederick Jackson, Inc. and Morgan Power Apparatus Corporation at their offices in Plaquemine, Louisiana, through their employee, Donald Bartnik, with the intent that the conduct of the said Stanley H. Jackson would be influenced with regard to his position and duty as a Louisiana State Police Officer."

(3) Sometime subsequent to the filing of said charges petitioner engaged the services of undersigned counsel to aid, assist and counsel him in connection with said criminal prosecutions and to enter a defense and to do those things reasonably calculated to secure the legal rights of your petitioner.

(4) In an effort to carry out his professional duties and to be of effective assistance to petitioner, your petitioner's undersigned counsel on October 9, 1968, at approximately 4:00 o'clock P.M. appeared at the place of business of the said Donald Bartnik in Baton Rouge, Louisiana, for the purpose of gaining an interview with the said Donald Bartnik with a view to developing the existence of any fact or knowledge which the said Donald Bartnik may possess concerning the criminal charges filed against your petitioner; your petitioner accompanied his said counsel on this occasion.

(5) Petitioner alleges that after having introduced himself and his counsel to the said Donald Bartnik and after having advised the said Donald Bartnik of the purpose of the appearance at his place of business as aforesaid the said Donald Bartnik advised your peti-

tioner and your petitioner's counsel that he had no objection to answering any and all questions that might be put to him concerning any knowledge he may have relative to the criminal charges aforesaid but he first wanted to determine whether or not he, the said Donald Bartnik, had the legal right to discuss the matter of his knowledge concerning these criminal charges;

(6) Petitioner avers that his counsel advised the said Donald Bartnik that he would certainly respect his desire to be informed as to his legal right to discuss the subject matter in question with your petitioner and his counsel and asked the said Donald Bartnik when the said Donald Bartnik desired to be again contacted for the purpose of disclosing to your petitioner and his counsel his decision to discuss the subject matter in question with your petitioner and his counsel; the said Bartnik responded that petitioner's counsel should contact him the following day at approximately the same time of the day of October 9, 1968.

(7) On October 10, 1968, at 3:00 o'clock P.M. your petitioner's undersigned counsel called the said Donald Bartnik by long-distance telephone as requested by him as herein aforesaid to obtain from him a statement of his position to be interviewed by petitioner's counsel; petitioner alleges that on reaching the said Donald Bartnik by telephone the said Donald Bartnik affirmatively stated that he personally had no objection to discussing the matter with your petitioner's counsel but that Kenneth Scullin, while acting in his capacity as Assistant Attorney General of the State of Louisiana, had instructed him not to talk to your petitioner or his counsel concerning any knowledge or information that he might have relative to the criminal charges filed against your

petitioner as herein aforesaid; furthermore the said Donald Bartnik stated that the said Scullin instructed the said Bartnik that should there ever be any interview between the said Bartnik and the said petitioner's counsel all arrangements for such an interview would have to be made through the said Scullin inasmuch as the said Scullin insisted on being present and on monitoring or controlling any such interview; the said Bartnik advised that he would follow the instructions of the said Scullin and consequently would not discuss the question of his knowledge and information relative to the criminal charges filed against your petitioner so long as the said Scullin so instructed him.

(8) Petitioner alleges that his said counsel advised the said Bartnik that he would reduce their conversation to writing, and while protesting the obstructive conduct of the said Scullin, by copy of the proposed letter he would seek to make arrangement for an interview with the said Bartnik and that accordingly on the same date petitioner's undersigned counsel wrote the following letter to the said Bartnik, to-wit:

October 10, 1968

"Registered-Return Receipt Requested

Mr. Don Bartnik
6124 Florida Boulevard
Baton Rouge, Louisiana 70806

Re: State of Louisiana v. Stanley H. Jackson

Dear Mr. Bartnik:

I have just completed my telephone conversation with you which took place at 3:00 P.M., October 10, 1968, when I called you in keeping with your suggestion that I do so during our oral conversation at

your place of business in Baton Rouge which took place at approximately 4:00 o'clock P.M., October 9, 1968. I advised you that I would reduce to writing the content of our telephone conversation and I am doing so at this time.

On October 9, 1968, I appeared at your place of business with Mr. Stanley Jackson and I advised you that I was there for the purpose of discussing with you any knowledge that you may have concerning the criminal charges filed against Mr. Jackson. You advised me that you were willing to discuss the matter with me but before doing so you wanted to determine whether or not you had the legal right to do this. I told you that I certainly respected your desire to be so informed and I asked you when you would be in a position to give me an answer as to your decision. You requested that I call you this date, October 10, 1968, for the purpose of receiving your answer.

In talking to you by telephone on this date, October 10, 1968, you advised me that you had consulted with Mr. Kenneth Scullin of the Attorney General's Office of Louisiana concerning my request to interview you. You advised me during the course of this telephone conversation that you personally had no objection to discussing this matter with me freely and completely. You advised however that you would not do so because Mr. Scullin had instructed you not to talk to me. He instructed you that should I want to talk to you I would have to contact him to make this arrangement and that you presumed that he wanted to be present and thus monitor any interview that I might have with you. You further advised me that you would follow his instructions because you did not know what your legal rights were in respect to such a proposition. I suggested to you that you call or consult with an attorney who had no interest in this prosecution. You advised

however that you did not feel that you should make any financial outlay to determine more definitely what your rights are and that you would rely upon the instructions of Mr. Scullin.

I told you during this conversation that in my opinion Mr. Scullin had no legal authority to so instruct you. Mr. Scullin has no legal control over you and does not function as your retained counsel. The effect of his instruction to you directly impairs the effective assistance of counsel to which Mr. Jackson is entitled. I further informed you that in my opinion his conduct in so obstructing Mr. Jackson in obtaining an interview with you constitutes a violation of Mr. Jackson's civil rights and violates likewise the federal civil rights statutes.

As a means of exhausting every possible avenue of securing a free and unconditional interview with you, I hereby reurge my request to talk to you and interview you privately. While I do not subscribe to the proposition that Mr. Scullin has any authority to instruct you in this matter, by copy of this letter I am transmitting to him this written request to speak to you. I do this so that Mr. Scullin's inentions will be clearly manifested by the course of conduct that he takes in response to this written request. Inasmuch as he has taken upon himself to obstruct the efforts of Mr. Jackson's counsel to effectively defend Mr. Jackson in the manner described in this letter, should he continue in this effort after receipt of this written request, and further condition my interview with you in any manner obstructive of a free and unmonitored interview with you, I serve notice on him and you that I intend to take definitive action in respect to the State action manifested by Mr. Scullin including a report of the matter to the Justice Department.

It is respectfully requested that you respond to this request by return mail. I will meet you any-

where that suits your convenience. I will meet anytime for the interview that suits your convenience. I seek a private interview with you and I seek to develop during that interview nothing but a truthful disclosure of your knowledge, if any, concerning the criminal charges filed against Mr. Jackson by Mr. Scullin and other officers of the Attorney General's Office of Louisiana.

I wish to express to you my gratitude for the courtesy which you displayed when I first interviewed you orally as mentioned in this letter and for having talked to me on the telephone and having expressed your willingness to speak to me and to submit to a private interview subject to Mr. Scullin's approval and prior arrangement.

Cordially yours,

/s/ J. MINOS SIMON

ehs

cc: Mr. Kenneth Scullin

Registered - Return Receipt Requested"

(9) Petitioner alleges that according to the return receipt accompanying said letter said letter was received by an agent of the said Donald Bartnik for the said Bartnik but said letter nevertheless was returned to your petitioner's undersigned counsel; petitioner believes that the said letter was returned by the said Bartnik on the further instruction of the said Kenneth Scullin, then acting as Assistant Attorney General of the State of Louisiana, who had simultaneously received a copy of said letter duly mailed to him.

(10) Petitioner alleges that said Kenneth Scullin,

while acting as a state official, is engaged in a willful effort to suppress facts, to intimidate and instruct a material witness into silence and that he threatens to continue to suppress such material facts and information so as to deprive your petitioner access to all available facts and to the effective assistance of counsel in defense against the criminal charges lodged against him; that the conduct of the said Kenneth Scullin denied petitioner of the federally secured right and privilege to effectively defend himself against and to make adequate preparation for his defense against the criminal charges lodged against him.

(11) Moreover petitioner alleges that on or about September 25, 1968, one Barry Marionneaux at that time, prior thereto, and since then functioning as an agent and/or investigator for said Attorney General, intimidated and threatened one Helen Marionneaux with criminal prosecution if she did not agree to become a witness against your petitioner in connection with the approachig trial of your petitioner then fixed for September 30, 1968; when the said Helen Marionneaux refused to be intimidated into becoming a witness against the said Stanley H. Jackson, the said Attorney General, functioning through another of his assistants, James D. Curley, fulfilled the threat communicated on September 25, 1968, by the said Barry Marionneaux by filing on October 1, 1968, a criminal charge of public bribery against the said Helen Marionneaux, and caused her to be arrested in connection therewith; that said charge of public bribery against the said Helen Marionneaux is identical with the charges against your petitioner in that it relates to the same factual transaction.

(12) Not only have state officials suppressed evidence

material to the criminal prosecutions against him, intimidated witnesses in an effort to have them bear false evidence against your petitioner and denied your petitioner of the effective assistance of counsel and of the right to adequately prepare his defense to the criminal charges filed against him, but your petitioner has otherwise been denied of constitutional due process and equal protection and continues to be so denied of these rights. For example:

(13) On September 13, 1968, during preliminary hearings concerning the criminal charges hereinabove mentioned your petitioner attempted to show in the Eighteenth Judicial District Court, Parish of Iberville, State of Louisiana, that the defendant Attorney General had in fact supplanted the District Attorney of said Judicial District Court and that under the laws of the State of Louisiana said Attorney General was not legally qualified to prosecute your petitioner, under the authority of *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1; the presiding judge, Honorable Daniel Kimball, overruled your petitioner's objection. Your petitioner's counsel reserved a bill of exception to this ruling and requested leave of court to establish the factual basis of his bill of exception in keeping with the provisions of Article 843 of the Code of Criminal Procedure of the State of Louisiana; said state district judge refused to permit your petitioner to do so and thereby denied to your petitioner the right to perfect his bills of exception and thus denied him of the right to an effective appeal inasmuch as the state appellate court can consider only formal bills of exceptions on appeal.

(14) Not only was petitioner denied of the right to perfect his bills of exception as herein aforesaid, but

at that time the state refused to provide him with a transcript of his bills of exception unless he was prepared to pay for this, notwithstanding the unarguable state law that such a transcript must be provided free of charge to him by the State of Louisiana.

(15) Application for remedial writs to the Louisiana Supreme Court was summarily denied for the claimed reason that "The defendant has an adequate remedy by appeal in the event of his conviction." Petitioner alleges, however, that the stated reason for refusing his writ is not well-founded; in the event of his conviction should he appeal the Louisiana Supreme Court in that instance will have nothing before it in respect to the trial court rulings complained of to review; while his conviction under such circumstances would have to be reversed, reversal would necessarily be based upon the failure of the trial judge to permit petitioner to establish his bills of exception and to be supplied with a transcript of these bills of exception; the original trial court rulings thus could never be reviewed in connection with such an appeal; it would be only after a second conviction that the legality of the trial court's rulings could be reviewable by appeal, in he event the state trial judge decided to accord to your petitioner the right to establish and perfect his bills of exception and to be supplied with a transcript of them.

(16) Petitioner alleges furthermore that under the laws of the State of Louisiana in the event of his conviction and sentence to five (5) years as authorized by the public bribery statute of the State of Louisiana, your petitioner could not be released on bail during his appeal, for the reason that the laws of the State of Louisiana prohibit such a release; thus your petitioner will

have to serve two (2) prison terms before the legality of the ruling complained of will become reviewable by the Louisiana Supreme Court.

(17) Again on September 23, 1968, state Judge Kimball similarly denied petitioner of the basic rights to which all citizens of Louisiana are entitled under the laws of the State of Louisiana as herein aforesaid and your petitioner's application for remedial writs to the Louisiana State Supreme Court similarly was denied on September 27, 1968, the State Supreme Court refusing to consider the application, treating it as an application for rehearing as to his previous application for remedial writs herein aforesaid.

(18) On September 26, 1968, petitioner filed a motion for change of venue as to the trial of criminal charge of public bribery bearing docket number 10,270, scheduled for September 30, 1968, alleging grounds therefor cognizable by the laws of the State of Louisiana; this motion was fixed for hearing for September 30, 1968.

(19) Approximately five (5) minutes before court formally opened on September 30, 1968, the State of Louisiana, acting through Kenneth C. Scullin, defendant herein, filed a motion for change of venue as to all of the remaining sixteen (16) criminal charges filed against your petitioner. Said Scullin in his motion stated no legal grounds recognized by the laws of the State of Louisiana; upon the opening of court said state Judge Kimball first entertained the motion for change of venue filed by the State of Louisiana, granted the same without any hearing and similarly granted petitioner's motion for change of venue without hearing any evidence whatsoever contrary to the laws of the State of Louisiana and

ordered the venue changed to Shreveport, Louisiana, some two hundred forty (240) miles from petitioner's domicile and from the site of original jurisdiction or venue.

(20) Shortly after these rulings were rendered your petitioner was informed that the change of venue to Shreveport, Louisiana, had been dictated to the court by the office of Attorney General of the State of Louisiana and that the change of venue to Shreveport resulted from collusion between officials of the Office of the Attorney General of Louisiana and the presiding state Judge Daniel Kimball; petitioner was informed that officials of the Attorney General's Office, including Kenneth Scullin, met with state witnesses on or about September 27, at which meeting it was determined that the criminal prosecutions against your petitioner would be changed to Shreveport, Louisiana, as a means of inflicting as much inconvenience and hardship on your petitioner as possible and as a means furthermore of removing the criminal prosecutions to the domicile of the former chief investigator of the Labor-Management Commission of Inquiry of the State of Louisiana, which agency initiated the criminal prosecutions against your petitioner mentioned herein.

(21) Upon being so informed your petitioner applied to the Eighteenth Judicial District Court to have the order changing the venue recalled and to grant to your petitioner a full hearing on his motion for change of venue, which would include the opportunity to produce evidence as to the climate of the public mind of other available and more convenient venues of the state to which the criminal prosecutions might be assigned in the event the evidence should justify the same, alleg-

ing in that application substantially what heretofore has been recited; said application was denied without any hearing whatever in that the state trial judge simply refuses to order service of the application on the State of Louisiana.

(22) Application to the Louisiana Supreme Court in respect to the refusal to conduct any hearing as to petitioner's application for recall of the order changing the venue and for a hearing on his application for a change of venue was summarily denied by that court on the same claim that petitioner has an adequate remedy by appeal in the event of his conviction; petitioner alleges, however, as heretofore recited, in the event of his conviction and sentence to the authorized five years' imprisonment, he would have to remain in jail until his appeal is heard; furthermore in the meantime he is being subjected to the harassment, ignominy and expense of a public criminal trial before a judicial forum in the State of Louisiana, which, because of the absolute invalidity of the order changing the venue, has no jurisdiction whatever to try your petitioner.

(23) Petitioner alleges that he has no adequate remedy at law to be secure in the exercise of his constitutional liberties; he has exhausted all possible state remedies; unless enjoined and prohibited from doing so, state officials will continue to intimidate witnesses to bear false evidence against him, to instruct and intimidate material witnesses from disclosing to petitioner and his counsel any information that they may have material to his defense, and will continue to be denied of the equal protection of state laws and thus will be subjected to useless prosecution and imprisonment and thus he will continue to suffer deprivations of his liberties as

secured to him by the Constitution of the United States; petitioner alleges that it is imperative that he be permitted to have the effective assistance of counsel, to adequately prepare his defense and not to be obstructed in this effort by the action of state officials in doing the things herein aforesaid or else he will suffer irreparable injury.

WHEREFORE PREMISES CONSIDERED petitioner respectfully prays that upon the filing of this complaint, as may appear fitting and proper to the court:

1. That a temporary restraining order do issue immediately without a hearing, enjoining, restraining and prohibiting defendants Jack P. F. Gremillion, Kenneth Scullin and Barry Marionneaux, their agents, employees, associates or successors in office and those acting in concert with them from (a) denying and depriving petitioner of his rights, privileges and constitutional immunities and particularly the right to have the effective assistance of counsel, to freely and fairly have access to persons having or purporting to have any knowledge concerning the criminal offenses with which he is charged, to freely speak to, interview and interrogate such persons, to make recordings and/or written statements of such interviews or interrogations and to freely and unconditionally do those things reasonably necessary and prudent, as in the judgment of his counsel shall appear fit and proper to the end of securing to your petitioner the effective assistance of counsel and the opportunity adequately to defend at the bar of justice; (b) coercing, intimidating and threatening persons to bear false witness against your petitioner or otherwise obstruct the due course of justice, and (c) taking any prosecutive steps or otherwise attempt to conduct any trial in re-

spect to all of the criminal charges filed against your petitioner herein, unless and until your petitioner's right to be heard in connection with all matters as to which the laws of the State of Louisiana grant the right to a hearing and the right to establish and perfect his bills of exceptions and be supplied with a transcript thereof without cost, shall have been respected, recognized, enforced and protected by the courts of the State of Louisiana having jurisdiction in such cases.

2. That this cause be advanced on the docket of this court and set for a speedy hearing according to law and on such preliminary hearing, that a preliminary injunction in the nature and substance of the temporary restraining order herein prayed for do issue, enjoining, restraining and prohibiting said defendants, their agents, employees and successors in office to the extent, nature and form of said temporary restraining order herein prayed for.

3. That upon final hearing of this cause on its merits this Honorable Court will enter a permanent injunction that will enjoin and restrain the said defendants, their agents, employees or their successors in office and all persons acting in concert with them forever from (a) denying and depriving petitioner of his rights, privileges and constitutional immunities and particularly the right to have the effective assistance of counsel, to freely and fairly have access to persons having or purporting to have any knowledge concerning the criminal offenses with which he is charged, to freely speak to, interview and interrogate such persons, to make recordings and/or written statements of such interviews or interrogations and to freely and unconditionally do those things reasonably necessary and prudent, as in the judgment of

his counsel shall appear fit and proper to the end of securing to your petitioner the effective assistance of counsel and the opportunity adequately to defend at the bar of justice; (b) coercing, intimidating and threatening persons to bear false witness against your petitioner or otherwise obstruct the due course of justice; and (c) taking any prosecutive steps or otherwise attempt to conduct any trial in respect to all of the criminal charges filed against your petitioner herein, unless and until your petitioner's right to be heard in connection with all matters as to which the laws of the State of Louisiana grant the right to a hearing and the right to establish and perfect his bills of exceptions and be supplied with a transcript thereof without cost, shall have been respected, recognized, enforced and protected by the courts of the State of Louisiana having jurisdiction in such cases.

PETITIONER FURTHER PRAYS that the right hereafter to sue in damages for the deprivation of his constitutional liberties be fully preserved herein and for all his costs.

J. MINOS SIMON
1408 Pinhook Road
Post Office Box 52116, OCS
Layfayette, Louisiana

/s/ J. MINOS SIMON

Attorney for Petitioner

STATE OF LOUISIANA

PARISH OF LAYFAYETTE

J. MINOS SIMON, being first duly sworn, did depose and say that he is of counsel in the foregoing complaint for injunctive relief; that all of the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

Further affiant states that the facts recited in the foregoing complaint exemplify an abrasive discriminatory pattern of criminal prosecution against members of Teamsters Local Union No. 5 of Baton Rouge, Louisiana, including complainant in the foregoing complaint; such willful state action is reflected in ways in addition to those set forth in the accompanying complaint; punitive damage, including the infliction of punishment through the process of exacting excessive bail has resulted; the following demonstrates such willful state action; despite state law to the contrary (Article 321, Louisiana Code of Criminal Procedure) without the showing of any cause whatever state Judge Daniel Kimball in cooperation with the office of the Attorney General of the State of Louisiana arbitrarily increased the

bail bonds of those charged together with complainant; this increase occurred on September 3, 1968, to-wit:

Name	*Original Bail*	*Bail Increased To*
Jerry Sylvester	$10,000	$28,000
Terry George	$10,000	$28,000
Jerry Kichen	$10,000	$28,000
Edgar Coleman	$10,000	$28,000
Tommy Craig	$10,000	$28,000
Alton Holden	$ 8,000	$20,000
Hugh Marionneaux	$ 8,000	$20,000
Emery C. Hendrick	$ 8,000	$20,000
Lloyd W. Kinchen	$ 8,000	$20,000
Emmett Tucker	$ 8,000	$20,000
Gene C. Fontenot	$ 8,000	$20,000
Billy Dardeau	$ 8,000	$20,000
Byron D. Vidrine	$ 8,000	$20,000

Furthermore affiant states that state Judge Kimball refused to conduct any hearing as to said increase when application was made to reduce the bail bond to its original amount; for example, Jerry Sylvester filed a formal application with the court presided over by state Judge Kimball styled: "Motion to Reinstate Prior Bail Bond; Alternatively to Reduce Current Bail Bond"; said motion was fixed for hearing for September 23, 1968; a written request dated September 19, 1968, for the issuance of compulsory process for the appearance of witnesses on behalf of the said Jerry Sylvester was hand-delivered to the Clerk of the State Court, Mrs. Theresa Delacroix; state Judge Kimball, however, after said request was received, instructed the said Theresa Delacroix not to issue said subpoenas; the action of state Judge Kimball was taken extrajudicially and for no

cause whatever; on the date of the scheduled hearing the said state Judge Kimball admitted to affiant that he had caused the cancellation of these subpoenas but assigned no reason whatever and consequently no hearing was conducted as to Sylvester's motion simply because state Judge Kimball refused to conduct any such hearing and furthermore interposed himself between the accused and his constitutional right to compulsory process of witnesses.

Affiant further states that Roderick Jenkins has been making formal request for a speedy trial since the early part of 1968, and consistently state Judge Kimball and the Eighteenth Judicial District Court as well as Louisiana Supreme Court have refused to accord him a speedy trial; his trial was assigned for October 7, 1968, but on September 23, 1968, said trial was set aside over the vigorous protest of the said Roderick Jenkins; similar action was taken as to the trial of Emmett Tucker and Billy Dardeau; though charged since January of 1968, none of these accused persons has been granted any hearing or a trial in conformity with the requirements of the laws of the State of Louisiana.

/s/ J. MINOS SIMON

J. MINOS SIMON

SWORN TO AND SUBSCRIBED before me on this 22nd day of October, 1968, at Lafayette, Louisiana.

(Signature not legible)

Notary Public

ORDER

Considering the foregoing complaint and supporting affiadavit:

IT IS ORDERED that a temporary restraining order do issue immediately without a hearing, enjoining, restraining and prohibiting defendants Jack P. F. Gremillion, Kenneth Scullin and Barry Marionneaux, their agents, employees, associates or successors in office and those acting in concert with them from (a) denying and depriving petitioner of his rights, privileges and constitutional immunities and particularly the right to have the effective assistance of counsel, to freely and fairly have access to persons having or purporting to have any knowledge concerning the criminal offenses with which he is charged, to freely speak to, interview and interrogate such persons, to make recordings and/or written statements of such interviews or interrogations and to freely and unconditionally do those things reasonably necessary and prudent, as in the judgment of his counsel shall appear fit and proper to the end of securing to your petitioner the effective assistance of counsel and the opportunity adequately to defend at the bar of justice; (b) coercing, intimidating and threatening persons to bear false witness against your petitioner or otherwise obtruct the due course of justice; and (3) taking any prosecutive steps or otherwise attempt to conduct any trial in respect to all of the criminal charges filed against your petitioner herein, unless and until your petitioner's right to be heard in connection with all matters as to which the laws of the State of Louisiana grant the right to a hearing and the right to establish and perfect his bills of exceptions and be supplied with a transcript thereof without cost, shall have been respected, recognized, enforced and

protected by the courts of the State of Louisiana having jurisdiction in such cases.

IT IS FURTHER ORDERED that said defendants do show cause on the .....day of....., 1968, at .....o'clock A.M., why a preliminary injunction in the nature of the temporary restraining order should not issue as prayed for.

OFFICIALLY GRANTED on this ..... day of ....., 1968, at Baton Rouge, Louisiana.

.....

United States District Judge

APPENDIX E-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CIVIL ACTION
NUMBER 68-177

STANLEY H. JACKSON

VERSUS

JACK P. F. GREMILLION,
KENNETH SCULLIN, AND
BARRY MARIONNEAUX

ORDER OF DISMISSAL

This is another in a series of complaints filed by counsel for petitioner on behalf of various persons charged with violating certain criminal statutes of the State of Louisiana. Counsel once again seeks to have this Court intervene and interfere with the criminal processes of the Courts of the State of Louisiana. In this case, as in all of the prior cases, the complaint sets forth no claim upon which this Court could, or should grant relief. Petitioner's recourse is to the State Court of Louisiana wherein the charges against him are pending. There is adequate remedy available to petitioner through the ordinary and lawful processes of the State Courts of

Louisiana, including their appellate procedures, and it is there that petitioner must look for any relief to which he may be entitled.

Thus, in the opinion of this Court, the lengthy and articulate complaint filed herein, having been prematurely filed, and failing, on its face, to set forth a claim upon which relief can be granted:

IT IS ORDERED that plaintiff's request for a temporary restraining order be, and it is hereby DENIED, and

IT IS FURTHER ORDERED that this case be, and it is hereby DISMISSED on the ground that it has been prematurely filed, and on the further ground that it fails to state a claim upon which relief can be granted by this Court.

Baton Rouge, Louisiana, October 28, 1968.

Original Signed: E. GORDON WEST

United States District Judge

APPENDIX F-1

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor-Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5, after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors should be singled out for destruction; in furtherance of said

plot, affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J. D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kinchen, members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor Management Commission of Inquiry of Louisiana that as much as Fifty Thousand ($50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident that there was no basis for the filing of said criminal charges, Joseph A. Oster, investigator for the Labor-Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who

would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the said Joseph A. Oster stated that he and members of the Labor-Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor-Management Commission of Inquiry would have fifty-one witnesses to say that he was there.

GEORGE WYATT

SWORN TO AND SUBSCRIBED before me on this ..... day of ....., 1968.

Notary Public

APPENDIX F-2

NO.....

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

Personally came and appeared before me

FRED S. LEBLANC

Judge of the Nineteenth Judicial District Court

STATE OF LOUISIANA

Vs.

GEORGE O. WYATT

Room 405, Bellemont Motel
7370 Airline Highway
Baton Rouge, Louisiana

Joseph A. Oster, Department of Justice, State of Louisiana, State Capitol, Baton Rouge, Louisiana.

That one GEORGE O. WYATT, Room 405, Bellemont Motel, 7370 Airline Highway, Baton Rouge, Louisiana, on or about the second (2nd) day of May, 1968, committed perjury in that he did intentionally make a written statement, knowing same to be false under sanction of an oath, before William C. Bradley, Notary Public, an official authorized to take testimony, as follows:

STATE OF LOUISANA
PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor-Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5, after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors should be singled out for destruction; in furtherance of said plot, affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J. D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kitchen, members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor-Management Commission of Inquiry of Louisiana that as much as Fifty Thousand ($50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident that there was no basis for the filing of said criminal charges, Joseph A. Oster, investigator for the Labor-Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the said Joseph A. Oster

stated that he and members of the Labor-Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor Management Commission of Inquiry would have fifty-one witnesses to say that he was there.

Within this State and Parish, and the jurisdiction of the Nineteenth Judicial Disrict Court, contrary to the form of the statutes of the State of Louisiana in such case made and provided, and against the peace and dignity of the same.

Wherefore, deponent prays that the said accused be arrested and dealt with according to law.

/s/ JOSEPH A. OSTER

Sworn to and subscribed before me this 30th day of July, 1968.

/s/ FRED S. LEBLANC

Judge Nineteenth Judicial District
Court of Louisiana

WARRANT

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

NINETEENTH JUDICIAL DISTRICT COURT

To the Sheriff or any Legal Officer:

WHEREAS, complaint has been made before me, upon oath, of Joseph A. Oster charging, one: George O. Wyatt, Room 405, Bellemont Motel, 7370 Airline Highway, Baton Rouge, Louisiana, with Perjury. Now, therefore, you are hereby commanded, in the name of the State, to apprehend and arrest the said accused and bring him before our Court to answer the said complaint. You are further commanded to keep the said accused in safe custody pending a session of the Court, or until released according to law, and this shall be your warrant.

Given under my official signature this 30th day of July, 1968.

Judge Nineteenth Judicial
District Court of Louisiana

APPENDIX F-3

No. 66,593

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE
NINETEENTH JUDICIAL DISTRICT COURT

RALPH L. ROY, Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that George O. Wyatt late of the Parish of East Baton Rouge, on or about the Second (2nd) day of May in the year of our Lord One Thousand Nine Hundred and Sixty-Eight (1968) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did commit perjury in violation of R.S. 14:123, in that he did intentionally make a written statement, for use in a judicial proceeding on the docket of the Federal District Court, Baton Rouge Division, captioned *Jenkins v. Gov. McKeithen, et al.*, No. 68-38, knowing same to be false under sanction of an oath, before William C. Bradley, Notary Public, an official authorized to take testimony, as follows:

"STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

GEORGE WYATT, being first duly sworn, did depose and say:

Heretofore he was employed as an undercover investigator for the Labor-Management Commission of Inquiry of Louisiana, taking orders alternately from officers and investigators of said Commission of Inquiry including Raymond Ruiz and Joseph A. Oster; that he was advised by his superiors that every effort should be made to criminally involve Edward Grady Partin primarily, and any member of Teamsters Local Union Number 5 of Baton Rouge, Louisiana, so as to bring about the criminal prosecution of Edward Grady Partin and members of Teamsters Local Union Number 5; in pursuit of that particular objective he was advised that he should infiltrate the ranks of Teamsters Local Union Number 5, after which he would be provided with explosives to be used for the purpose of destroying equipment belonging to Barber Brothers Contractors; that thereafter he was to subscribe to a statement to the effect that, and to testify accordingly, the destruction by bombing of said equipment was done pursuant to instructions given to him by Edward Grady Partin; that officials of Barber Brothers Contractors were made aware of this plot to frame Edward Grady Partin and consented thereto, hedging only to the extent of emphasizing that only the old equipment of Barber Brothers Contractors would be singled out for destruction; in furtherance of said plot, affiant was employed by Barber Brothers Contractors under a pseudo name and used license plates from the State of Minnesota on his vehicle.

Affiant further states that he was advised that J.

D. Arnold, Wade McClanahan, Terry George, Jerry Sylvester, Hugh Marionneaux and Lloyd Kitchen, members of Teamsters Local Number 5 of Baton Rouge, Louisiana, could be shot and killed by members of the Commission of Inquiry at the slightest provocation in a manner that would make it appear to be an act of self-defense and that complete immunity would be given to any employees of the Commission of Inquiry who would kill said persons.

Affiant further states that he was told by officials of the Labor-Management Commission of Inquiry of Louisiana that as much as Fifty Thousand ($50,000.00) Dollars could be obtained from persons representing James R. Hoffa to pay to affiant in return for getting Edward Grady Partin by any means to admit that his testimony against James R. Hoffa was not entirely correct.

Affiant states that he was given carte blanche authority to do anything that he thought might be effective, regardless of the legality thereof, so long as there could be developed a factual basis for the criminal prosecution of Edward Grady Partin.

Affiant further states that after criminal charges were filed against Roderick Jenkins and after it became evident that there was no basis for the filing of said criminal charges. Joseph A. Oster, investigator for the Labor-Management Commission of Inquiry, in responding to your affiant's statement to the said Oster that it was his information Jenkins had a number of witnesses who would testify that in fact he was on the job site of his employment at the time of the alleged criminal activities for which he was charged, the said Joseph A. Oster stated that he and members of the Labor-Management Commission of Inquiry would find and bring to testify for each witness testifying on behalf of Jenkins, persons who would testify to the contrary and that if

> Jenkins had fifty witnesses to testify that he was not in Plaquemine, Louisiana, at the site of the criminal activities alleged in the charge against him, Oster and members of the Labor-Management Commission of Inquiry would have fifty-one witnesses to say that he was there."

Said written statement under sanction of oath hereinabove referred to relating to matter material to the issue and question and controversy in the above-mentioned suit No. 68-38 on the docket of the Federal District Court, Baton Rouge Division, that the said Louisiana Labor-Management Commission of Inquiry was unconstitutionally established and is being administered and operated in violation of individuals' civil rights under federal statutes, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

RALPH L. ROY
Assistant District Attorney
19th Judicial District of
Louisiana

CERTIFICATE

I hereby certify that the Petition for Rehearing submitted on behalf of Mr. Patrick G. Martone is presented in good faith and not for delay.

Lafayette, Louisiana

This 6th day of November, 1968.

J. MINOS SIMON
1408 Pinhook Road
P. O. Box 52116, OCS
Lafayette, Louisiana

Attorney for Appellant

PROOF OF SERVICE

I, J. Minos Simon, Attorney for Mr. Patrick G. Martone, Plaintiff-Appellant in the captioned proceedings, and a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of Mr. Martone's application for rehearing filed before this Court has been served on the several parties hereto by mailing the same in a duly stamped envelope with first-class postage prepaid to their attorneys of record, Ashton L. Stewart, Esquire, Special Assistant Attorney General, State of Louisiana, 604 Union Federal Building, Baton Rouge, Louisiana, and Wesley Wirtz, Esquire, Assistant Attorney General, State of Louisiana, State Capitol, Baton Rouge, Louisiana.

Lafayette, Louisiana

This 6th day of November, 1968.

J. Minos Simon
1408 Pinhook Road
P. O. Box 52116, OCS
Lafayette, Louisiana

Attorney for Appellant

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

MARTONE v. MORGAN ET AL.

APPEAL FROM THE SUPREME COURT OF LOUISIANA.

No. 216. Decided October 14, 1968.

PER CURIAM.

The appeal is dismissed for want of a substantial federal question.

MR. JUSTICE BLACK dissents.